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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0476; Product Identifier 2016-NM-110-AD; Amendment 39-19111; AD 2017-24-07]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014-08-01, which applied to all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014-08-01 required an inspection for part numbers of the interconnecting struts and, for affected interconnecting struts, identification of the part and serial numbers of the associated target and proximity sensors and replacement or re-identification of the flap interconnecting strut if necessary. This AD continues to require an inspection to verify the interconnecting strut part number. This AD also provides a new compliance time and an additional inspection for previously inspected airplanes. This AD was prompted by an investigation that showed that when a certain combination of target/proximity sensor serial numbers is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when reaching the mechanical end stop of the interconnecting strut. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 26, 2014 (79 FR 9398, February 19, 2014).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0476.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0476; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014-08-01, Amendment 39-17825 (79 FR 23900, April 29, 2014) (“AD 2014-08-01”). AD 2014-08-01 applied to all Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the

Federal Register on May 19, 2017 (82 FR 22918).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016-0113, dated June 15, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

The flap interconnecting strut is a safety device of the High Lift System which acts as an alternative load path from one flap surface to another in case of a flap drive system disconnection. In such a failure case, the installed proximity sensors provide information to the slat flap control computer (SFCC) and the operation of the flap drive system is inhibited.

An engineering investigation showed that, when a certain combination of target/sensor serial number (s/n) is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when reaching the mechanical end stop of the interconnecting strut.

This condition, if not corrected, could cause a flap down drive disconnection to remain undetected, due to an already-failed interconnecting strut sensor, potentially resulting in asymmetric flap panel movement and consequent loss of control of the aeroplane.

To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A320-27-1206 and SB A320-57-1164, to provide identification and replacement instructions for struts that have a certain target/sensor s/n combination installed. Aeroplanes on which modification (mod) 27956 had been accomplished in production were identified as not affected by the unsafe condition. Consequently, EASA issued [EASA] AD 2012-0012 [which corresponds to FAA AD 2014-08-01] to require accomplishment of these inspections and corrective actions.

Since that [EASA] AD was issued, Airbus has informed EASA about a batch of aeroplanes that were delivered with pre-mod 27956 Part Number (P/N) flap interconnecting strut(s) installed, but declared to be in post-mod configuration in the Aircraft Inspection Report. Airbus SB A320-57-1202 has been issued to provide instructions to verify the interconnecting strut P/N, and to update aircraft documentation.

In addition, to ensure that all pre-mod parts are checked and corrected as required, SB A320-27-1206 was revised to include a wider range of P/N of affected interconnecting struts.

For the reasons described above, this [EASA] AD retains the requirements of EASA

AD 2012–0012, which is superseded, expands the Applicability [adds affected part numbers], changes the compliance time and requires an additional inspection for aeroplanes that have already been inspected.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0476.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment. United Airlines and the Air Line Pilots Association, International supported the NPRM.

Request To Add Additional Identification Steps

Delta Airlines (DAL) requested that additional identification steps be required in the NPRM to ensure that the affected parts are correctly identified. DAL stated that figure 1 to paragraphs (g) and (h) of the proposed AD contains part numbers for affected interconnecting struts. DAL commented that a review of its records from inspections conducted during compliance with AD 2014–08–01 determined that other part numbers were possible. DAL stated that it has had at least one instance of a part with the part number D5757032200000A.

DAL stated that figure 2 to paragraphs (i)(2), (k), and (l) of the proposed AD adds the provision that additional alphanumeric characters may exist. DAL commented that while the NPRM removes some of the ambiguity that existed in AD 2014–08–01, a review of Airbus’s Aircraft Illustrated Parts Catalog (AIPC) does not show any parts with a “letter” suffix. DAL provided a photo that showed that the part number appears to “wrap” (to the next line) on the part. DAL stated that this

“wrapping” condition has led to confusion in identifying the parts.

DAL stated that per the Airbus AIPC Front Matter, the 13th, 14th, and 15th characters are controlled in specific ways. DAL also stated that the 13th and 14th characters are expected to be “00” and are used to fill out 12-digit base numbers on the part installed during production. DAL stated that the 15th character is a paint code designator and found the use of a paint code designator unusual on a part that is not viewable or expected to be painted to match an air carrier paint scheme. DAL commented that it believes the AD should be updated to show 00A, 00B, or the list of true possibilities, and the XXX allowance creates a significant number of possible part numbers that DAL must identify as prohibited.

We agree to clarify the requirement to identify affected parts. Regarding the characters in the part number, identifying the last three characters are not required to identify a discrepant part; only the first twelve base numbers are required. Therefore, we do not agree to revise this AD to include a complete list of all possible combinations of these characters.

We acknowledge the commenter’s concern about the “wrapping” condition for part identification. However, in the photo provided by the commenter only the last three characters are “wrapped.” As stated previously, the last three characters are not required to identify a discrepant part.

Formatting Change to a Figure

Figure 3 to paragraph (k)(1) of this AD has been reformatted to clarify affected manufacturer serial numbers.

Records Review

We have determined that a review of maintenance records is acceptable for complying with the actions specified in paragraphs (i)(1) and (i)(2) of this AD, provided the part number of the

installed interconnecting struts and the part number and the serial number of the associated target and proximity sensor can be conclusively determined from that review. We have revised paragraph (i) of this AD accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015. The service information describes procedures for an inspection to determine the part number of the installed interconnecting struts and the part number and serial number of the associated target and proximity sensors, and procedures for replacement and re-identification of the interconnecting struts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 1,032 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and replacement (retained actions from AD 2014–08–01).	8 work-hours × \$85 per hour = \$680	\$0	\$680	\$701,760
Inspection and replacement (new action)	15 work-hours × \$85 per hour = \$1,275	0	1,275	1,315,800

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more

detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–08–01, Amendment 39–17825 (79 FR 23900, April 29, 2014), and adding the following new AD:

2017–24–07 Airbus: Amendment 39–19111; Docket No. FAA–2017–0476; Product Identifier 2016–NM–110–AD.

(a) Effective Date

This AD is effective January 5, 2018.

(b) Affected ADs

This AD replaces AD 2014–08–01, Amendment 39–17825 (79 FR 23900, April 29, 2014) (“AD 2014–08–01”).

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by an investigation that showed that when a certain combination of target/proximity sensor serial numbers is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when reaching the mechanical end stop of the interconnecting strut. We are issuing this AD to prevent an undetected flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection To Determine the Part Number of the Interconnecting Struts, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2014–08–01, with revised service information. Within 8,000 flight hours after March 26, 2014 (the effective date of AD 2014–03–08, Amendment 39–17745 (79 FR 9398, February 19, 2014) (“AD 2014–03–08”)), inspect to determine the part number of the interconnecting struts installed on both the left-hand (LH) and right-hand (RH) wings of the airplane, in accordance with the Accomplishment Instructions of Airbus

Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011; or Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015. A review of the airplane maintenance records is acceptable for determining the part number of the installed interconnecting struts, in lieu of the inspection, if the part number of the installed interconnecting struts, and the part number and the serial number of the associated target and proximity sensor, can be conclusively determined from that review.

Accomplishment of the requirements of paragraph (i) of this AD terminates the requirements of this paragraph.

(1) Airplanes on which Airbus Modification 27956 has been embodied in production, and on which no interconnecting strut has been replaced with a strut having a part number specified in figure 1 to paragraphs (g) and (h) of this AD since the airplane’s first flight: No further work is required by paragraph (g) of this AD.

(2) If, during the inspection required by paragraph (g) of this AD, any interconnecting strut is installed with a part number specified in figure 1 to paragraphs (g) and (h) of this AD: Within 8,000 flight hours after March 26, 2014 (the effective date of AD 2014–03–08), determine the part number and the serial number of the associated target and proximity sensor.

(i) For airplanes having conditions specified in paragraphs (g)(2)(i)(A), (g)(2)(i)(B), (g)(2)(i)(C), and (g)(2)(i)(D) of this AD: Before further flight, replace the interconnecting strut with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011; or Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015. For the purposes of paragraph (g) of this AD, a serviceable interconnecting strut is a unit that has been determined to be in compliance with the requirements of paragraph (g) of this AD.

(A) A target part number (P/N) ABS0121–13 or P/N 8–536–01; and

(B) A target serial number lower than 1600, or a target serial number that is unreadable; and

(C) A proximity sensor having P/N ABS0121–31 or P/N 8–372–04; and

(D) A proximity sensor having a serial number between C59198 and C59435, or a serial number (S/N) C500000 or higher.

(ii) For a target having S/N 1600 or higher and target P/N ABS0121–13 or P/N 8–536–01: Within 8,000 flight hours after March 26, 2014 (the effective date of AD 2014–03–08), re-identify the interconnecting strut, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011; or Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

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Figure 1 to paragraphs (g) and (h) of this AD – *Affected Interconnecting strut part numbers*

Affected Interconnecting strut part numbers
D5757030500000
D5757030500100
D5757030500200
D5757030500600
D5757030500800
D5757030501000
D5757030501200
D5757032200000

(h) Retained Parts Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2014–08–01, with no changes. As of March 26, 2014 (the effective date of AD 2014–03–08), no person may install an interconnecting strut with a part number specified in figure 1 to paragraphs (g) and (h) of this AD, on any airplane, except for parts identified in paragraph (g)(2)(ii) of this AD, provided that the actions in paragraph (g)(2)(ii) are done. As of the effective date of this AD, comply with the requirements of paragraph (l) of this AD in lieu of the requirements of this paragraph.

(i) New Requirements of This AD: Inspection To Determine the Part Number of the Interconnecting Struts and the Part Number and Serial Number of the Associated Target and Proximity Sensor

Within 24 months after the effective date of this AD, accomplish the actions specified in paragraphs (i)(1) and (i)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015. Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (g) of this AD. In lieu of doing the actions specified in paragraphs (i)(1) and (i)(2) of this AD, a review of the airplane maintenance records is acceptable for determining the part number of the installed interconnecting struts and the

part number and the serial number of the associated target and proximity sensor, if the part number and serial numbers can be conclusively determined from that review.

(1) Inspect to determine the part number of the interconnecting struts installed on both the LH and RH wings on the airplane.

(2) If an interconnecting strut is installed with a part number specified in figure 2 to paragraphs (i)(2), (k), and (l) of this AD, identify the part number and the serial number of the associated target and proximity sensor; and for the target and proximity sensor part number and serial number combination specified in paragraph (j) of this AD, within the compliance times specified in paragraph (j) of this AD, do the actions specified in paragraph (j) of this AD for that interconnecting strut.

Figure 2 to paragraphs (i)(2), (k), and (l) of this AD – Affected Interconnecting Struts (XXX signifies any alpha-numeric combination. It may be possible to find units with only XX.)

D57570305000XXX
D57570305001XXX
D57570305002XXX
D57570305006XXX
D57570305008XXX
D57570305010XXX
D57570305012XXX
D57570322000XXX

(j) New Requirements of This AD: Replacement or Re-Identification

(1) If the target serial number is lower than 1600 or is unreadable, and the proximity sensor part number is P/N ABS0121–31 or P/N 8–372–04 with a serial number between S/N C59198 and C59435, or S/N C500000 or higher: Before further flight, do the actions specified by paragraph (j)(1)(i) or (j)(1)(ii) of this AD. For the purposes of paragraph (j) of this AD, a serviceable interconnecting strut is a unit that has been determined to be in compliance with the requirements of paragraphs (i) and (j) of this AD.

(i) Replace the interconnecting strut with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

(ii) Do a general visual inspection of the flap down drive to detect discrepancies, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

(A) If no discrepancy is found, within 50 flight cycles after the inspection, replace the interconnecting strut with a serviceable unit,

in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

(B) If any discrepancy is found, before further flight, replace the interconnecting strut with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

(2) If the target serial number is 1600 or higher (with any proximity sensor part number and serial number): Within 24 months after the effective date of this AD, re-identify the interconnecting strut, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015.

(k) Additional Provisions of This AD

(1) Airplanes on which Airbus Modification 27956 has been embodied in production, and on which no interconnecting strut with a part number identified in figure 2 to paragraphs (i)(2), (k), and (l) of this AD has been installed since the airplane's first flight, are not affected by the requirements of

paragraph (i) of this AD, except for those manufacturer serial numbers specified in figure 3 to paragraph (k)(1) of this AD. Airplanes having manufacturer serial numbers specified in figure 3 to paragraph (k)(1) of this AD are affected by the requirements of paragraph (i) of this AD.

(2) For an airplane that has already been inspected before the effective date of this AD as specified in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, dated January 28, 2011; or Revision 01, dated October 10, 2011: Within the compliance time specified in paragraph (i) of this AD, accomplish the additional work specified in and in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 02, dated November 2, 2015, unless it is determined that no interconnecting strut with a part number specified in figure 2 to paragraphs (i)(2), (k), and (l) of this AD is installed on that airplane. A review of airplane maintenance records is acceptable to make this determination, provided the part number can be conclusively identified from that review.

Figure 3 to paragraph (k)(1) of this AD – Additional affected manufacturer serial numbers

Airplane model	Affected manufacturer serial numbers			
A320 series airplanes	1857	1858	1860	1861
	1864	1865	1867	1868
	1871	1873	1874	1877
	1879	1883	1885	1888
	1889	1891	1892	1894
	1895	1896	1898	1899
	1900	1902	1903	1904
	1906	1907	1909	1910
	1911	1913	1914	1915
	1917	1918	1920	1922
	1924	1927	1929	1931
	1933	1935	1937	1940
	1942	1944	1945	1948
	1949	1951	1954	1957
	1958	1961	1964	1965
	1968	1969	1973	1975
	1979	1981	1983	1987
A319 series airplanes	1819	1820	1824	1826
	1831	1833	1837	1839
	1841	1844	1846	1851
	1853	1855	1863	1866
	1870	1872	1875	1876
	1880	1882	1884	1886
	1890	1893	1897	1901
	1908	1912	1916	1923
	1925	1934	1936	1938
	1943	1947		

BILLING CODE 4910–13–C**(l) New Requirement of This AD: Parts Installation Limitations**

As of the effective date of this AD, no person may install, on any airplane, an interconnecting strut with a part number specified in figure 2 to paragraphs (i)(2), (k), and (l) of this AD, unless it is in compliance with the requirements of this AD.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before March 26, 2014 (the effective date of AD 2014–03–08), using Airbus Service Bulletin A320–27–1206, dated January 28, 2011, and if additional work since March 26, 2014 (the effective date of AD 2014–03–08) has been

accomplished using Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International

Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (o)(2) of this AD. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for AD 2014-08-01 are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016-0113, dated June 15, 2016, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0476.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-1405; fax 425-227-1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on January 5, 2018.

(i) Airbus Service Bulletin A320-27-1206, Revision 02, dated November 2, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on March 26, 2014 (79 FR 9398, February 19, 2014).

(i) Airbus Service Bulletin A320-27-1206, Revision 01, dated October 10, 2011.

(ii) Reserved.

(5) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(6) You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 16, 2017.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017-25557 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0708; Product Identifier 2017-NM-035-AD; Amendment 39-19113; AD 2017-24-09]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016-20-11, which applied to certain Airbus Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes); and Airbus Model A310 series airplanes. AD 2016-20-11 required repetitive inspections of the external area of the aft cargo door sill beam for cracking, repetitive inspections for fatigue cracking of the cargo door sill

beam, lock fitting, and torsion box plate, and repair if necessary. This new AD retains the inspections for cracking, and repair if necessary; and requires reinforcement of the aft cargo door sill beam area. This AD was prompted by the development of a reinforcement modification of the aft cargo door sill beam area, which constitutes terminating action for the repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 2, 2014 (79 FR 34403, June 17, 2014).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 3, 2017 (81 FR 85837, November 29, 2016).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0708.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0708; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356;

telephone 425-227-2125; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016-20-11, Amendment 39-18677 (81 FR 85837, November 29, 2016) ("AD 2016-20-11"). AD 2016-20-11 applied to certain Airbus Model A300-600 series airplanes; and Airbus Model A310 series airplanes. The NPRM published in the **Federal Register** on July 27, 2017 (82 FR 34891). The NPRM was prompted by a determination that reinforcement of the aft cargo door sill beam area is necessary to address the unsafe condition, which constitutes terminating action for the repetitive inspections. The NPRM proposed to continue to require repetitive inspections of the external area of the aft cargo door sill beam for cracking, repetitive inspections for fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, and repair if necessary. The NPRM also proposed to require reinforcement of the aft cargo door sill beam area. We are issuing this AD to prevent fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, which could result in the loss of the door locking function and subsequently, loss of the cargo door in flight and rapid decompression.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017-0048, dated March 15, 2017; corrected April 20, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A300-600 series airplanes; and Airbus Model A310 series airplanes. The MCAI states:

In the frame of the widespread fatigue damage (WFD) compliance study and after an in-service occurrence, the area of the aft cargo door sill beam and adjacent structure was identified as sensitive to the fatigue loads.

This condition, if not detected and corrected, could lead to failure of multiple lock fittings, possibly resulting in loss of the cargo door in flight and consequent explosive decompression of the aeroplane.

To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A53W005-14 providing inspection instructions and, consequently, EASA issued Emergency AD 2014-0097-E [which corresponded to FAA AD 2014-12-06, Amendment 39-17867, (79 FR 34403, June 17, 2014)] to require repetitive ultrasonic inspections (US) or detailed inspections

(DET) of the aft cargo door sill beam area [and corrective actions if necessary].

After that [EASA] AD was issued, further analysis indicated that repetitive high frequency eddy current (HFEC) inspections needed to be introduced, and Airbus published Service Bulletin (SB) A310-53-2139 and SB A300-53-6179 to provide instructions. Prompted by this determination, EASA issued AD 2015-0150 [which corresponded to FAA AD 2016-20-11], retaining the requirements of EASA Emergency AD 2014-0097-E, which was superseded, and required repetitive HFEC inspections of the concerned areas. The first HFEC inspection terminated the repetitive US/DET inspections. That [EASA] AD also required the inspection results to be reported.

Since that [EASA] AD was issued, Airbus developed a reinforcement modification of the aft cargo door sill beam area, and published Airbus SB A310-53-2141 and SB A300-53-6181, which were revised lately, to make this available for in-service application.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2015-0150, which is superseded, and requires modification [reinforcement] of the aft cargo door sill beam, which constitutes terminating action for the repetitive inspections.

This [EASA] AD is re-published to correct the compliance time description in Table 4.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0708.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Make the Mandatory Terminating Modification Optional

FedEx requested that the terminating modification in paragraph (n) of the proposed AD be made an optional action. FedEx stated that they have inspected their airplanes as required by AD 2016-20-11 and have not found any cracks during HFEC inspections. FedEx noted that they have inspected airplanes having accumulated anywhere from 12,000 total flight cycles to 40,000 total flight cycles. FedEx suggested that the modification would be necessary on less than 1 percent of inspected airplanes over the next 10 years. FedEx claimed that the modification is an unproven change that has not been subjected to full scale fatigue testing. For these reasons, FedEx argued that inspections alone will maintain safe airworthiness for the affected airplanes.

We disagree with the commenter's request. EASA, as the State of Design Authority for Airbus products, has determined an unsafe conditions exists

after conducting a risk analysis taking into consideration in-service data for the worldwide fleet. We agree with EASA's risk assessment and their decision to mitigate the risk by mandating the modification in this AD. FedEx has not provided sufficient data to support their request to allow inspections in lieu of the modification. We have not changed this AD in this regard.

Request To Update the Costs for the Modification

FedEx requested that we update the labor costs for the modification in the proposed AD. FedEx stated that their labor costs for the modification will be an additional \$10,000 per airplane. FedEx further noted that the modification would extend their service checks, resulting in additional out-of-service time for their airplanes and additional expenses.

We partially agree with the commenter's request. The number of work-hours to complete the modification depends on the airplane's configuration. In the NPRM, we used the 40 work-hours estimate for the configuration that requires less time to modify. We have updated this final rule to reflect work-hour costs of up to 68 hours (the estimated work-hours for the other configuration) for the required modification.

Regarding the additional costs related to extended service checks, we do not consider it appropriate to attribute the costs associated with aircraft "downtime" to the AD. Normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if additional downtime is necessary for some airplanes in some cases, we do not have sufficient information to evaluate the number of airplanes that may be affected or the amount of additional downtime that may be required. Therefore, we are unable to provide an estimate for these variable costs. We have made no further change to this final rule regarding this issue.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015; and Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015. This service information describes procedures for reinforcing the aft cargo door sill beam area. These documents are distinct since they apply to different airplane models.

Airbus has also issued Service Bulletin A300–53–6179, dated

December 12, 2014; and Service Bulletin A310–53–2139, dated December 12, 2014. This service information describes procedures for repetitive HFEC inspections of the cargo door sill beam, lock fitting, and torsion box plate. These documents are distinct since they apply to different airplane models.

Airbus has also issued Alert Operators Transmission AOT A53W005–14, Revision 01, dated April 29, 2014, which describes procedures for doing an ultrasonic inspection or detailed

inspection of the aft cargo door sill beam external area for cracking.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 75 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained action from AD 2016-20-11).	12 work-hours × \$85 per hour = \$1,020 per inspection cycle.	N/A	\$1,020 per inspection cycle.	\$76,500 per inspection cycle.
Modification (new action)	Up to 68 work-hours × \$85 per hour = \$5,780.	\$96,890	Up to \$102,670	Up to \$7,700,250.
Reporting (retained action from AD 2016-20-11).	1 work hour × \$85 per hour = \$85 per inspection cycle.	\$0	\$85 per inspection cycle.	\$6,375 per inspection cycle.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–20–11, Amendment 39–18677 (81 FR 85837, November 29, 2016), and adding the following new AD:

2017–24–09 Airbus: Amendment 39–19113; Docket No. FAA–2017–0708; Product Identifier 2017–NM–035–AD.

(a) Effective Date

This AD is effective January 5, 2018.

(b) Affected ADs

This AD replaces AD 2016–20–11, Amendment 39–18677 (81 FR 85837, November 29, 2016) (“AD 2016–20–11”).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, all manufacturer serial numbers on which Airbus modification 05438 has been embodied in production, except those on which Airbus modification 12046 has been embodied in production.

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Airbus Model A300 B4–605R and B4–622R airplanes.

(3) Airbus Model A300 F4–605R and F4–622R airplanes.

(4) Airbus Model A300 C4–605R Variant F airplanes.

(5) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of fatigue cracks on the cargo door sill beam, lock fitting, and torsion box plate. We are issuing this AD to prevent fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, which could result in the loss of the door locking function and subsequently, loss of the cargo door in flight and rapid decompression.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–20–11, with no changes. Within the compliance time identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable: Do an ultrasonic inspection or detailed inspection of the aft cargo door sill beam external area for cracking, in accordance with Airbus Alert Operators Transmission (AOT) A53W005–14, dated April 22, 2014; or Airbus AOT A53W005–14, Revision 01, dated April 29, 2014. Repeat the inspection thereafter at intervals not to exceed 275 flight cycles. As of January 3, 2017 (the effective date of AD 2016–20–11), use only Airbus AOT A53W005–14, Revision 01, dated April 29, 2014, to comply with the requirements of this paragraph.

(1) For airplanes that have accumulated 30,000 flight cycles or more since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06, Amendment 39–17867, (79 FR 34403, June 17, 2014) (“AD 2014–12–06”)): Within 50 flight cycles after July 2, 2014.

(2) For airplanes that have accumulated 18,000 flight cycles or more, but fewer than 30,000 flight cycles since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06): Within 275 flight cycles after July 2, 2014.

(3) For airplanes that have accumulated fewer than 18,000 flight cycles since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06): Before exceeding 18,275 flight cycles since the airplane's first flight.

(h) Retained Optional Terminating Action, With No Changes

This paragraph restates the provisions of paragraph (h) of AD 2016–20–11, with no changes. Accomplishment of a high frequency eddy current (HFEC) inspection for cracking, in accordance with Airbus AOT A53W005–14, dated April 22, 2014; or AOT A53W005–14, Revision 01, dated April 29, 2014; terminates the repetitive inspections required by paragraph (g) of this AD for that airplane. If any cracking is found during the HFEC inspection, before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) Retained Reporting Requirement, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2016–20–11, with no changes. Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to “Airbus Service Bulletin Reporting Online Application” on Airbus World (<https://w3.airbus.com/>), at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, including no findings.

(1) If the inspection was done on or after January 3, 2017 (the effective date of AD 2016–20–11): Submit the report within 30 days after the inspection.

(2) If the inspection was done before January 3, 2017 (the effective date of AD 2016–20–11): Submit the report within 30 days after January 3, 2017.

(j) Retained Definition of Airplane Groups, With No Changes

This paragraph restates the definitions specified in paragraph (j) of AD 2016–20–11, with no changes. Paragraphs (k)(1), (k)(2), and (k)(3) of this AD refer to airplane groups, as identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) Airplanes on which an HFEC inspection was accomplished as specified in Airbus AOT A53W005–14.

(2) Airplanes on which no HFEC inspection was accomplished as specified in Airbus AOT A53W005–14, that have accumulated more than 18,000 total flight cycles as of January 3, 2017 (the effective date of AD 2016–20–11).

(3) Airplanes on which no HFEC inspection was accomplished as specified in Airbus AOT A53W005–14, that have accumulated 18,000 total flight cycles or fewer as of January 3, 2017 (the effective date of AD 2016–20–11).

(k) Retained Repetitive HFEC Inspections, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2016–20–11, with no changes. At the applicable time specified in

paragraph (k)(1), (k)(2), or (k)(3) of this AD: Do an HFEC inspection for fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, in accordance with Airbus Service Bulletin A300–53–6179, dated December 12, 2014; or Airbus Service Bulletin A310–53–2139, dated December 12, 2014; as applicable. Repeat the HFEC inspection thereafter at intervals not to exceed 4,600 flight cycles.

(1) For airplanes identified in paragraph (j)(1) of this AD: Inspect within 4,600 flight cycles after the most recent HFEC inspection specified in Airbus AOT A53W005–14.

(2) For airplanes identified in paragraph (j)(2) of this AD: Inspect within 2,000 flight cycles after January 3, 2017 (the effective date of AD 2016–20–11).

(3) For airplanes identified in paragraph (j)(3) of this AD: Inspect before exceeding 13,000 total flight cycles since the airplane's first flight, or within 2,000 flight cycles after January 3, 2017 (the effective date of AD 2016–20–11), whichever occurs later.

(l) Retained Corrective Action, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2016–20–11, with no changes. If any crack is found during any inspection required by paragraph (g) or (k) of this AD: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA.

(m) Retained Terminating Action for Repetitive Inspections in Paragraph (g) of This AD, With No Changes

This paragraph restates the terminating action of paragraph (m)(1) of AD 2016–20–11, with no changes. For any airplane identified in paragraphs (j)(2) and (j)(3) of this AD, accomplishment of the initial inspection required by paragraph (k) of this AD terminates the repetitive inspections required by paragraph (g) of this AD.

(n) New Cargo Door Reinforcement

At the latest of the applicable times specified in paragraphs (n)(1), (n)(2), and (n)(3) of this AD: Reinforce the aft cargo door sill beam area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015; or Airbus Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015; as applicable.

(1) Before exceeding 19,600 flight cycles since first flight of the airplane.

(2) Within 2,300 flight cycles after the last HFEC or detailed inspection required by this AD that was accomplished before the effective date of this AD.

(3) Within 12 months after the effective date of this AD.

(o) New Terminating Action

Modification of an airplane as required by paragraph (n) of this AD constitutes terminating action for the repetitive inspections required by paragraphs (g) and (k) of this AD for the modified airplane only.

(p) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (n) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300–53–6181, dated June 26, 2015; or Airbus Service Bulletin A310–53–2141, dated June 26, 2015; as applicable.

(q) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (r)(2) of this AD. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for AD 2016–20–11 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer*: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(4) *Required for Compliance (RC)*: Except as required by paragraph (l) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted

methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0048, dated March 15, 2017; corrected April 20, 2017, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0708.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (s)(5) and (s)(6) of this AD.

(s) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 2, 2014 (79 FR 34403, June 17, 2014).

(i) Airbus Alert Operators Transmission A53W005–14, dated April 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on January 3, 2017, (81 FR 85837, November 29, 2016).

(i) Airbus Alert Operators Transmission A53W005–14, Revision 01, dated April 29, 2014.

(ii) Airbus Service Bulletin A300–53–6179, dated December 12, 2014.

(iii) Airbus Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015.

(iv) Airbus Service Bulletin A310–53–2139, dated December 12, 2014.

(v) Airbus Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(6) You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Renton, Washington, on November 22, 2017.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–25763 Filed 11–30–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 641**

[Docket No. ETA–2017–0005]

RIN 1205–AB79

Senior Community Service Employment Program; Performance Accountability

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Interim Final Rule (IFR) revising performance accountability measures for the Senior Community Service Employment Program (SCSEP). Revised measures are necessary because the Older Americans Act Reauthorization Act of 2016 (OAA) amended the measures of performance for the SCSEP program in large part to align them with the performance measures mandated for programs under the Workforce Innovation and Opportunity Act (WIOA). This IFR revises the Performance Accountability subpart of the SCSEP regulations to reflect changes necessitated by the passage of the 2016 OAA. In addition, this rule makes minor, non-substantive amendments to other subparts of the SCSEP regulations to reflect the OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to the Workforce Investment Act of 1998 (WIA), which WIOA superseded. This IFR solicits public comment on this IFR, which the Department will consider when it issues a Final Rule.

DATES: *Effective date:* This IFR is effective January 2, 2018.

Compliance date: Performance information under the measures implemented in this IFR are required to be reported beginning July 1, 2018.

Comment date: To ensure consideration, comments must be in writing and must be received on or before January 30, 2018.

ADDRESSES: You may submit comments, identified by docket number ETA–2017–0005 or the Regulatory Information Number (RIN) 1205–AB79, by any one of the following methods:

- **Federal e-Rulemaking Portal:** <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- **Mail:** Please address all written comments (including disk and CD-ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

- **Hand Delivery/Courier:** Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Instructions: Label all submissions with “RIN 1205–AB79.” Please submit your comments by only one method.

Please be advised that the Department will post all comments received to this IFR on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters not include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information may become easily available to the public via the <http://www.regulations.gov> Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this IFR will be available on the <http://www.regulations.gov> Web site and can be found using RIN 1205–AB79. The Department will make all the comments it receives available for public inspection during normal business hours at the Office of Policy Development and Research (OPDR) at

the above address. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact OPDR at (202) 693–3700 (VOICE). Please note this is not a toll-free number. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT:

Amanda Ahlstrand, Administrator, Office of Workforce Investment, 202–693–3980. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

- I. Background
- II. Section-by-Section Discussion of IFR
- III. Rulemaking Analyses and Notices

I. Background

The SCSEP, authorized by title V of the Older Americans Act (OAA), is the only Federally sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be 55 years of age or older, with incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service employment assignments in public and non-profit organizations and agencies so that they can gain on-the-job experience. The dual goals of the program are to promote useful opportunities in community service activities and also to move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency.

The OAA, Public Law 114–144 (Apr. 19, 2016), amended the statutory provisions authorizing SCSEP and requires the Department to implement the amendments to the SCSEP performance measures by December 31, 2017. See OAA sec. 513(d)(4) (42 U.S.C. 3056k(d)(4), as amended by 2016 OAA sec. 6(d)(4)¹). The purpose of this IFR is to fulfill that statutory requirement.

¹ Section 6 of the Older Americans Act Reauthorization Act of 2016 (2016 OAA), Public Law 114–144, amended secs. 502–518 of title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.). For ease of reference, this preamble will refer to the changes to title V made by the 2016 OAA by referring to the amended sections of the

The OAA requires the Secretary to “implement the core measures of performance not later than December 31, 2017.” OAA sec. 513(d)(4), 42 U.S.C. 3056k(d)(4). Accordingly, this IFR includes both the definitions of the measures (as required by OAA sec. 513(b)(2)) and the processes used to implement these measures in the conduct of the SCSEP grants. These processes include how the Department and grantees initially determine and then adjust expected levels of performance for the grants, and how the Department determines whether a grantee fails, meets, or exceeds the levels of performance. This IFR updates the current processes so that they reflect the changes required by the OAA.

The Administrative Procedure Act (APA) authorizes agencies to issue a rule without notice and comment upon a showing of good cause. 5 U.S.C. 553(b)(B). The APA’s good cause exception to public participation applies upon a finding that those procedures are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). According to the legislative history of the APA, “unnecessary” means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.” Senate Report No. 752 at p. 200, 79th Cong. 1st Sess. (1945). As explained by the U.S. Court of Appeals for the D.C. Circuit, “when regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.” *Gray Panthers Advocacy Cmm. v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991). The Department has determined that there is good cause to find that a pre-publication comment period is unnecessary. The revisions set forth herein to the existing regulations at 20 CFR part 641 codify statutory changes requiring little to no agency discretion or are technical amendments updating terminology or outdated references to WIA, which WIOA superseded. For this reason, the Department’s implementation of this rule as an IFR, with provision for post-promulgation public comment, is in accordance with sec. 553(b) of the APA.

Grantees may submit comments on the IFR until January 30, 2018, and the Department will consider them prior to issuing the rule finalizing this IFR. The Department plans to make any additional changes to the SCSEP regulations not related to the

Older Americans Act, and will not continue to provide the citations to sec. 6 of the 2016 OAA.

performance measures through a notice-and-comment rulemaking process.

The OAA requires the Department to establish and implement the new SCSEP performance measures after consultation with stakeholders. OAA sec. 513(b)(2). The Department satisfied these statutory requirements when it solicited public input on the definitions and implementation of the statutory performance measures in April and May of 2017. On May 8, 2017, the Department sent an email to 4,529 stakeholders, inviting them to register for the consultation. The invitees included 2,491 American Job Center managers, 523 SCSEP grantee and sub-grantee managers, 55 governors, 300 State workforce administrators, and 1,220 State Development Board chairs and directors. Those who registered received a reminder email on May 15, 2017.

Stakeholders were also informed that they could submit written comments after the consultation.

In response to this outreach effort, 394 individuals registered for the consultation from these stakeholder groups: Workforce development boards and American Job Centers; local, State, and Federal government; nonprofit organizations; direct providers of employment services; labor organizations; educational organizations; economic development organizations; and others. Of the 394 registered participants, 273 attended the consultation on May 16, 2017. At the start of the consultation, participants identified these affiliations: SCSEP grantees or sub-grantees (70 percent); WIOA partner, One-Stop operator, or American Job Center affiliate (18 percent); national or local aging agency (4 percent); SCSEP host agency (1 percent); Administration for Community Living (1 percent); and other (6 percent).

During the consultation, 100 written comments were received via the chat function. Some attendees submitted multiple comments. After the consultation, three grantees each submitted multiple comments in writing. Thirty of the comments are not relevant to the subject of the consultation or this IFR. Most of these comments were directed at the mechanics of the online webinar through which the consultation was conducted, announced participants' arrivals or departures from the webinar, or were in other ways non-substantive. A few substantive comments are not relevant to this IFR in that they do not relate to the performance measures or other changes required by the OAA amendments. The program office will review these substantive comments to

inform its continued operation of the program and its future technical assistance.

Fifteen comments addressed SCSEP's overall relationship with WIOA. As set forth above, increased coordination with WIOA is one of the main purposes of the OAA amendments. However, except for the adoption of some of the WIOA core measures, the programmatic coordination with WIOA is not the subject of this IFR.

Three questions asked specifically about the relationship between the SCSEP performance measures and WIOA: Whether WIOA will adopt measures of community service similar to the SCSEP measures, whether the SCSEP measures will be incorporated into the Participant Individual Record Layout (PIRL, the WIOA performance reporting system), and whether SCSEP performance will be factored into the statewide WIOA performance. The changes in this IFR to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with the three employment outcome indicators mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i)(I)–(III). In addition to these three WIOA employment outcome indicators of performance, SCSEP has three measures related to participation in the program: Service level, hours of community service, and service to the most-in-need. These three measures are unique to SCSEP and are retained unchanged by the current OAA amendments. Although WIOA has several similar measures, these SCSEP measures are not directly applicable to WIOA. In addition, the WIOA primary indicators of performance include effectiveness in serving employers; the corresponding measure for SCSEP under the OAA, as discussed below at § 641.720, is not directly parallel because it includes participants and host agencies, as well as employers. All the SCSEP measures will be incorporated into the PIRL, along with other aspects of SCSEP performance. However, although the 2016 OAA amendments require SCSEP to adopt several of WIOA's primary indicators of performance, SCSEP is independent of WIOA, and SCSEP performance is not included in the WIOA State program or indicator scores.

Two other general comments were received during the consultation:

- One comment asked whether the Department will still require all grantees to use the SCSEP Performance and Results Quarterly Performance System (SPARQ). The Department is exploring a new case management system that may replace SPARQ in whole or in part.

Grantees must continue using SPARQ until the Department informs them that a new system is available.

- One grantee questioned whether the new performance measures apply to both State and national grantees. Like the current measures, the new measures apply to all grantees.

Finally, another comment from a stakeholder requested that the Department provide grantees as much notice of the new measures as possible so grantees have time to program their internal computer systems. The Department is sensitive to the importance of providing ample notice to the grantees and of minimizing the burden of implementing the new regulations. With the publication of this IFR and the first required reporting of the new measures starting on July 1, 2018, grantees will have ample time to make the minimal changes required by the new measures. The Department will provide technical assistance and guidance as soon as possible in order to provide additional support to grantees in their implementation efforts.

The Department carefully considered all comments received as we developed this IFR. In the following section of the preamble entitled "Section-by-Section Discussion of Interim Final Rule," the Department summarizes and discusses the input received from stakeholders.

The 2016 OAA changes to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with those mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i). The WIOA performance measures were implemented in a joint final rule issued by the Departments of Labor and Education on August 19, 2016 (81 FR 55792) (Joint WIOA Final Rule), after notice and comment rulemaking, and are codified in 20 CFR part 677. This IFR revises 20 CFR part 641, subpart G (Performance Accountability) to codify the revised SCSEP performance measures in the 2016 OAA sec. 513, which in large part aligns the SCSEP performance measures with the WIOA performance measures. In addition, this rule makes technical amendments to other subparts of part 641 to reflect 2016 OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded.

Coordination between the SCSEP and the WIOA programs continues to be an important objective of the OAA. SCSEP is a required partner in the workforce development system (per WIOA sec. 121(b)(1)(B)(v)), and SCSEP is required

to coordinate with the WIOA One-Stop delivery system (OAA sec. 511, 42 U.S.C. 3056i), such as by accepting each other's assessments and Individual Employment Plans (OAA sec. 502(b)(3), 42 U.S.C. 3056(b)(3)). The underlying notion of the One-Stop delivery system is the coordination of programs, services, and governance structures, so that the customer has access to a seamless system of workforce development services. Although there are many similarities to the system established under WIA, there are also significant changes under WIOA that are intended to make substantial improvements to the public workforce delivery system. The Joint WIOA Final Rule requires partners to collaborate to support a seamless customer-focused service delivery network; requiring that programs and providers co-locate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and employers alike.

The Department remains committed to a system-wide continuous improvement approach grounded upon proven quality principles and practices. Although many of the SCSEP regulations remain unchanged from the 2010 SCSEP Final Rule (75 FR 53786), this IFR codifies the 2016 OAA revisions to the program that align senior employment services with the workforce development system under WIOA. In particular, this rule aligns the SCSEP performance measures related to employment and earnings with the performance measures established by WIOA to enhance consistency and coordination between the programs and ensure effective services for older Americans. The changes implemented by the rule are discussed in more detail in Section II.

II. Section-by-Section Discussion of Interim Final Rule

In this section, we discuss the changes made to the regulations as required by the 2016 OAA.

Non-Substantive Technical Amendments

In addition to the changes made to part 641, subpart G (Performance Accountability) codifying the 2016 OAA statutory revisions as described more fully below, this IFR makes non-substantive technical amendments throughout all of part 641 to reflect the 2016 OAA amendments and to align the SCSEP program language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded. The IFR revises § 641.140 by removing definitions that

are no longer operational as a result of the 2016 OAA amendments and WIOA, revising definitions consistent with updates to governing law, and adding definitions to address new terminology as a result of statutory amendments.

In particular, the IFR removes the definition of “additional measures” because the 2016 OAA removed them from the SCSEP performance requirements. The IFR also removes the definition of “volunteer work” because the 2016 OAA removed the term from the SCSEP performance measures. Also, as part of aligning SCSEP with WIOA, the IFR removes the definition for “Local Workforce Investment Area” and adds “Local Workforce Development Area.”

The IFR updates the definition of “core measures” (which the 2016 OAA changed from “core indicators”) to refer to the new measures of performance laid out in amended OAA sec. 513(b)(1) and implemented by this rule. To align with WIOA, the IFR changes the terms “core services” and “intensive services” to “career services,” and updates the definitions of “Workforce Innovation and Opportunity Act (WIOA)” and “Workforce Innovation and Opportunity Act regulations” (changed from “Workforce Investment Act (WIA)” and “Workforce Investment Act regulations,” respectively). This update clearly establishes that the term “Workforce Innovation and Opportunity Act regulations” includes all WIOA and Wagner-Peyser Act regulations, including the regulations implementing WIOA sec. 188. Similarly, to align the text of the SCSEP definitions with the terms used in WIOA, the IFR revises the definitions of “Local Board,” “One-Stop Center,” “One-Stop delivery system,” and “State Board” to reflect the definitions as they have been updated under WIOA. Additionally, the IFR updates the WIA citations to use WIOA citations in the definitions of “Co-enrollment,” “Most-in-need,” “One-Stop partner,” and “Training Services.” Additionally, the IFR updates the OAA citations in the definitions “Pacific Island and Asian Americans,” “Supportive services,” and “Unemployed” to be consistent with the OAA as amended by the 2016 OAA.

The IFR adds a definition of “community service employment” because that term is used in sec. 513 of the 2016 OAA. To avoid confusion, the definition of “community service employment” is the same as “community service assignment,” so those two terms can be used interchangeably.

This IFR also adds a new § 641.370 to state that for a State that obtains

approval of a WIOA Combined State Plan under 20 CFR 676.143, the requirements of WIOA sec. 103 and 20 CFR part 676 will apply in lieu of OAA sec. 503(a) and part 641, subpart C. This implements a provision added by the 2016 OAA to sec. 503 of the OAA, which aligns the requirements of the States submitting SCSEP State Plans with the WIOA State Plan requirements.

Finally, the IFR updates the references to the regulations that implement sec. 188 of WIOA, the nondiscrimination and equal opportunity provisions of WIOA. Those regulations take the place of the WIA sec. 188 regulations. They were finalized in January 2017 and codified in 29 CFR part 38.

Only the substantive subpart G revisions are described in detail in the remainder of this section-by-section discussion.

Subpart G—Performance Accountability

Throughout this subpart, the Department has revised the term “core indicator(s)” to “core measure(s)” to align the regulation with the 2016 OAA, specifically sec. 513(a), 42 U.S.C. 3056k(a). The amended statute also refers to “indicators.” However, because the statute uses the terms interchangeably, for consistency and to reduce the possibility of confusion, the Department uses only the term “measures” throughout this subpart. Other changes made to the sections of subpart G are described below.

Section 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

The Department has made several revisions to paragraph (a) to align with the 2016 OAA and the WIOA performance measures. In addition to revising references to “indicators” to “measures” as described above, the Department has removed all reference to “additional indicators” throughout this section. The 2016 OAA removed the additional measures of performance that were not subject to goal-setting and corrective actions, as they were previously established in sec. 513(b)(2) of the 2006 OAA. In order to align with the 2016 OAA, the Department has replaced the first sentence in paragraph (a) that stated “There are currently eight performance measures, of which six are core indicators and two are additional indicators,” with the sentence “There are seven core performance measures.” In addition, the Department has deleted the last sentence that stated “Additional indicators (defined in § 641.710) are not subject to goal-setting and are, therefore, also not subject to corrective action.”

Other revisions the Department has made to remove reference to “additional indicators” in other sections are discussed below.

The Department also revised the second sentence of paragraph (a) to remove reference to the requirement that performance level goals for each core measure must be agreed upon by the grantee and the Department “before the start of each program year.” As described in the discussion of revisions in § 641.720 below, grantees and the Department no longer are required to reach agreement on levels of performance prior to each year. Rather, per 2016 OAA sec. 513(a)(2)(C), agreement on levels of performance is now required to be reached every 2 years, prior to each 2-year period of the SCSEP grants (that is, prior to the first program year and the third program year of the grant. The Department replaced the phrase “before the start of each program year” with a reference to § 641.720.

The Department made several changes to paragraph (b), which now reads “Core measures,” to align with the 2016 OAA’s amendments to the measures. Many of these changes align SCSEP’s performance measures to the performance measures established by WIOA for the title I core programs, as implemented in 20 CFR 677.155. First, the Department made a technical change to paragraph (b) to replace the outdated reference to the 2006 OAA with a reference to the OAA as amended. The Department has not revised the core measure for hours of community service employment implemented in paragraph (b)(1) because the 2016 OAA did not amend this measure.

In paragraph (b)(2), the Department replaced the second core measure “Entry into unsubsidized employment” with the core measure “The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This core measure is required by OAA sec. 513(b)(1)(B) and aligns with the measure as described in sec. 116(b)(2)(A)(i)(I) of WIOA and implemented in 20 CFR 677.155(a)(1)(i), except that the WIOA statute uses the term “program participants,” rather than “project participants.” The revised performance measure is different from the former SCSEP measure in that the 2016 OAA now clarifies that entry into unsubsidized employment is to be measured during the second quarter after exit. Previously, the 2006 OAA statute did not state when the rate was measured, and the 2006 regulations required it to be measured at the first quarter after exit, which was consistent

with the WIA performance measures at that time.

Next, in paragraph (b)(3), the Department replaced the third core measure “Retention in unsubsidized employment for six months” with the core measure “The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.” This core measure is required by OAA sec. 513(b)(1)(C) and aligns with the measure as described in sec. 116(b)(2)(A)(i)(II) of WIOA and implemented in 20 CFR 677.155(a)(1)(ii). This is a separate and distinct employment measure for the fourth quarter after exit, which measures the employment rate in that quarter. A participant will be counted as a positive outcome for this measure if he or she is employed in the fourth quarter after exit regardless of whether he or she was also employed in the second quarter after exit.

In paragraph (b)(4), the Department replaced the fourth core measure “Earnings,” with the core measure “The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This core measure is required by OAA sec. 513(b)(1)(D) and aligns with the measure as described in sec. 116(b)(2)(A)(i)(III) of WIOA and implemented in 20 CFR 677.155(a)(1)(iii). This performance measure gauges median earnings at the same time frame as the above measure gauges the employment rate of participants. The use of a median is a shift from the use of an average under WIA and is consistent with the requirements of WIOA.

The Department added a fifth performance measure in paragraph (b)(5) for “indicators of effectiveness in serving employers, host agencies, and project participants.” This core measure is required by OAA sec. 513(b)(1)(E) and partially aligns with the WIOA measure, “effectiveness in serving employers,” as described in sec. 116(b)(2)(A)(i)(VI) of WIOA and implemented in 20 CFR 677.155(a)(1)(vi). A similar measure for “satisfaction of the participants, employers, and their host agencies with their experiences and the services provided” was included as an additional measure in the 2006 OAA sec. 513(b)(2), which was not subject to goal-setting and corrective actions. (This same measure was also a core measure under the 2000 OAA amendments.) However, the 2016 OAA establishes this as a core measure of performance. This is further discussed below in the preamble text that corresponds to § 641.710(e).

To accommodate the newly added fifth core performance measure, the Department renumbered former paragraphs (b)(5) and (6) as paragraphs (b)(6) and (7), respectively, to contain the sixth and seventh core measures, which remain the same as they were under the 2006 OAA.

As discussed above, the 2016 OAA removed the additional measures of performance that were previously found at sec. 513(b)(2) of the 2006 OAA. Therefore, the Department has deleted former paragraphs (c)(1) through (4), “Additional indicators,” and has renumbered paragraphs (d) and (e) as (c) and (d), respectively. In addition, the Department has replaced the words “indicators of performance and additional indicators of performance” from the renumbered paragraph (c) with the word “measures,” and has replaced the words “indicators of performance and to report information on the additional indicators of performance” from the renumbered paragraph (d) with the word “measures,” to be consistent with the 2016 OAA amendments to these terms as described above.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity.

Section 641.710 How are the performance measures defined?

The Department revised the core indicator (now “core measure”) definitions contained in this section to align with the revised core measures set forth in § 641.700 of this IFR. As discussed below, the Department deleted the entirety of former paragraph (b) to remove the definitions for the former “additional indicators,” which the 2016 OAA removed. Thus, as an initial change, the Department renumbered paragraphs (a)(1) through (6) to (a) through (g) (to include the definition for an added core measure, as discussed below).

The Department did not revise paragraph (a), renumbered from former paragraph (a)(1), which contains the definition for the first core measure for hours of community service employment as currently implemented.

In paragraph (b), renumbered from former paragraph (a)(2), the Department included a definition for the second performance measure, “percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This performance measure is defined by the following formula: The number of participants who exited during the reporting period who are

employed in unsubsidized employment during the second quarter after the exit quarter, divided by the number of participants who exited during the reporting period. This figure will be multiplied by 100 and reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in Training and Employment Guidance Letter (TEGL) 10-16, *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs*, published December 19, 2016.

In paragraph (c), renumbered from former paragraph (a)(3), the Department included a definition for the third performance measure, “percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.” This performance measure is defined by the following formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period, multiplied by 100 so as to be reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10-16.

In paragraph (d), renumbered from former paragraph (a)(4), the Department included a definition for the fourth performance measure, “median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This performance measure is defined by the following formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: The wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10-16.

Several comments received during the stakeholder consultation described at the beginning of this preamble questioned the adoption of the median as opposed to the mean for the new measure of earnings. One comment suggested that the first year under the new measures be designated as a baseline year since the Department does not have the ability to determine what the impact the change in calculation will have on performance. The use of the median is required by the 2016 OAA and the Department has no discretion in

this matter. The Department understands, however, that all three of the new outcome measures use different calculations from the measures currently in effect and that it will take some time to establish a reliable baseline to use in setting goals for these measures. To help determine how performance under the current measures relates to performance under the new measures as set forth in this IFR, the Department will reanalyze prior grantee performance data reported under the existing measures using the calculations required for the new measures as established by this IFR and to create a cross-walk between the two sets of measures. If that proves to be an inadequate basis for setting the Program Year (PY) 2018 grantee goals, the Department will take that into consideration in the goal setting process and will take appropriate action. See discussion of § 641.730 below.

During the consultative process, one stakeholder raised the concern that the new employment outcome measures set forth in this IFR at paragraphs (b), (c), and (d) will be harder for grantees to achieve than the measures that have been in effect and will make the program overall seem less effective than it actually is. The Department addressed this comment in discussion of § 641.740 below.

The Department has added a definition in paragraph (e) for the fifth performance measure, “effectiveness in serving employers, host agencies, and project participants.” While this definition is similar to the definition used for this indicator under the 2006 OAA, when it was an additional indicator, the 2016 OAA revised the definition so that it focuses more specifically on effectiveness rather than satisfaction in general. The Department may revise the definition in paragraph (e) in the future once the Department finalizes the definition of the corresponding WIOA performance measure “effectiveness in serving employers”. For the WIOA core programs, the Department is initially implementing the effectiveness measure in the form of a pilot program. The pilot would allow several approaches (including wage records, the repeated use rate for employers’ use of the core programs, and employers served) with the intent of assessing each approach, ultimately to develop a standardized measure.

The Department received fifteen comments during the consultative process addressing this new core measure. Most comments assumed that the use of the current customer satisfaction surveys would continue for

all or some of the three SCSEP customer groups, and several comments questioned how the Department would define “effectiveness.”

- Six comments recommended that the administration of the employer survey be changed to include host agencies that hire SCSEP participants into unsubsidized jobs within their organizations. Under the survey administration procedures used for the existing measure, a host agency receives only a host agency survey (rather than an employer survey) even if the agency subsequently hires a participant assigned to it and thus becomes that individual’s employer.

- One comment stated that effectiveness is different from satisfaction and suggested that the survey questions would need to change to encompass customers’ assessment of effectiveness. Another comment recommended that field staff review and comment on any revised or new survey questions.

- One comment recommended that the surveys be distributed electronically and be available for distribution in hard copy as needed.

- Three comments recommended that SCSEP use the WIOA approach to piloting new measures of effectiveness in serving employers. One of these comments further suggested the extension of the WIOA pilot approach to host agencies, allowing SCSEP grantees to vote on which measures SCSEP as a whole would pilot, and the retention of the current participant customer satisfaction survey. This comment also recommended training sessions for the grantees on various approaches for determining pilot measures. Another of the three commenters who recommended piloting measures of effectiveness in serving employers recommended that the Department provide grantees with customer relationship management (CRM) software.

The Department appreciates the suggestions about ways to measure effectiveness in serving SCSEP’s customers that build and improve on the current method of surveying those customers. Although the new SCSEP measure of effectiveness parallels the language of the WIOA measure, it differs because it also measures the effectiveness in serving participants and host agencies, as well as employers. As the comments appear to acknowledge, the WIOA approach to the measure, which is being piloted until 2019, does not have obvious application to SCSEP’s other two customer groups. As a result, for the SCSEP measure, the Department has decided to continue surveying all

three customer groups to assess the effectiveness of the services received as an interim measure at least until the WIOA pilot is complete and a WIOA measure is defined in final form. By using the same definition as that of the current customer satisfaction measure during this interim period, the Department will not require SCSEP customers to change their current practices or take on any additional burden. The Department welcomes comments on this measure.

During this interim period, the Department will explore with grantees, and with its three customer groups, options for best measuring the effectiveness of SCSEP's services, including the suggestions made by the commenters. The Department will also explore ways to improve the efficiency of the current customer surveys (including the use of online surveys and changes to the administration of the employer survey) and will examine what, if any, new or revised questions would support an index of effectiveness as an alternative to the current index of satisfaction.

To conform to the changes outlined above, the Department has renumbered former paragraph (a)(5) to (f). The Department also has renumbered former paragraph (a)(6)(i) through (xiii) to (g)(1) through (13). Renumbered paragraphs (f) and (g) correspond to the sixth and seventh SCSEP performance measures, the definitions of which are unchanged.

Several comments regarding paragraph (g), the most-in-need measure, recommended adding ex-offender to the list of barriers to employment included in the statute for determining participants who are most in need of SCSEP services. The Department agrees that ex-offenders have serious and unique barriers to employment, but for purposes of this IFR, the Department will use the list provided in the statute. The Department also notes that ex-offender status is already incorporated into the most-in-need measure because it is a factor that would result in a participant having low employment prospects, one of the factors included in the most-in-need measure. However, as part of its review of the statistical model for the adjustment of grantee goals, the Department will consider whether ex-offender should be considered with the other participant characteristics currently used in the SCSEP model. See discussion of the statistical model in preamble text discussing § 641.720.

Another comment regarding the most-in-need measure stated that the current definition of frail, which is one of the barriers to employment that the statute

includes in the most-in-need measure, is incorrect because it could require a grantee to enroll someone who is in a nursing home. This theoretical objection to the definition of frail misunderstands its use in the SCSEP performance system. Frail is not part of the eligibility determination and is not one of the priorities of service required by the OAA. Rather, it is an additional barrier to employment that a participant may develop during enrollment and that potentially entitles a participant to have an extended period of enrollment.

Nineteen comments received during the consultation and additional comments received from three grantees after the consultation were addressed to how the Department would compute or define the performance measures (other than the measure, "Indicators of effectiveness in serving employers, host agencies, and project participants," which is addressed below). Several comments related to how the exit cohorts would be defined and what the timing rules would be. These questions have been addressed by the definitions provided in this IFR and the discussion in other parts of this preamble. As set forth below, separate guidance will be provided on the technical aspects of the timing and reporting requirements.

The 2016 OAA removed the additional indicators of performance that were previously established in sec. 513(b)(2) of the 2006 OAA. Therefore, the Department has deleted former paragraphs (b)(1) through (3) that contained definitions for the additional indicators.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made to the regulations for purposes of correcting typographical errors and improving clarity.

Section 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

The Department has made substantial revisions to this section to align with the 2016 OAA, which in large part mirrors the process for establishing the expected performance levels required by WIOA for the title I core programs, as implemented in 20 CFR 677.170.

The revised paragraph (a), which requires agreement between the grantee and the Department for expected levels of performance for the first 2 program years of the grant, mirrors the statutory language in 2016 OAA sec. 513(a)(2)(B) and (C)(i) and aligns with WIOA sec. 116(b)(3)(A)(iv)(I). Specifically, paragraph (a) states that each grantee

must reach agreement with the Department on levels of performance for each measure listed in § 641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also states that the levels agreed to will be considered to be the expected levels of performance for the grantee for such program years, and funds may not be awarded under the grant until such agreement is reached. Lastly, this paragraph states that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The Department considers PY 2016 and PY 2017 to be the first 2 program years under the current SCSEP grants. For national grantees, these were the first 2 program years following the last grant competition. For State grantees, these were the first 2 program years of the current SCSEP State Plans.

The revised paragraph (b), which requires agreement for expected levels of performance for the third and fourth program years of the grant mirrors the statutory language provided in 2016 OAA sec. 513(a)(2)(B) and (C)(ii) and in alignment with WIOA sec.

116(b)(3)(A)(iv)(II). As explained above, the Department considers PY 2018 and PY 2019 to be the third and fourth program years of the current SCSEP grant agreements. Specifically, paragraph (b) states that each grantee must reach agreement with the Department, prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in § 641.700, for each of the third and fourth program years of the grant. This paragraph states that, in reaching the agreement, the grantee and the Department must take into account the expected levels proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also states that the levels agreed to will be considered to be the expected levels of performance for the grantee for those program years. Lastly, like the requirement in paragraph (a), this paragraph states that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated

expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The Department has added a new paragraph (c), "Factors," to require that the negotiated levels of performance must be based on the three factors listed in paragraphs (c)(1) through (3), as required by 2016 OAA sec. 513(a)(2)(D) and in alignment with WIOA sec. 116(b)(3)(A)(v). Paragraph (c)(1) states that the negotiated levels must take into account how a grantee's levels of performance compare with the expected levels of performance established for other grantees. *See* OAA sec. 513(a)(2)(D)(i) and WIOA sec. 116(b)(3)(A)(v)(I). Paragraph (c)(2) states that the negotiated levels must be adjusted using an objective statistical model based on the model established by the Department of Labor with the Department of Education in accordance with WIOA sec. 116(b)(3)(A)(viii) and implemented in § 677.170(c). *See* 29 U.S.C. 3141(b)(3)(A)(viii), OAA sec. 513(a)(2)(D)(ii), and WIOA sec. 116(b)(3)(A)(v)(II). The objective statistical adjustment model will account for actual economic conditions and characteristics of participants, including the factors required by WIOA sec. 116(b)(3)(A)(v)(II). Paragraph (c)(3) states that the negotiated levels must take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds. *See* OAA sec. 513(a)(2)(D)(iii) and WIOA sec. 116(b)(3)(A)(v)(III).

In paragraph (d), the Department revises the adjustment requirements contained in former paragraph (b). The Department has replaced the adjustment factors specified in former (b)(1) through (3) with the requirement that the Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2), adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year. These revisions align with OAA sec. 513(a)(2)(E).

For consistency with the 2016 OAA, the IFR removes the language in paragraphs (a)(1) through (3) of § 641.720 that describes the negotiation process in detail. However, the negotiation process that the Department intends to use under these new performance measures is similar to the current process, and includes similar

opportunities for input from the grantees:

- In the spring of 2018, the Department will analyze grantees' baseline performance and issue proposed goals for the next 2 program years, PY 2018 and PY 2019, based on the new adjustment factors.
- If a grantee disagrees with those goals, it may propose its own goals and may request to negotiate.
- Prior to the negotiation, the grantee must provide the Department with the data on which the grantee's proposed goals are based.
- The grantee and Department must reach agreement before funds for the coming 2 program years can be approved; the agreed upon goals will be the expected levels of performance upon which the annual evaluation of grantee performance will be based. If the grantee and the Department fail to reach agreement, no funds may be released.
- At the conclusion of the negotiation, the grantee may submit comments regarding the grantee's satisfaction with the negotiated levels of performance, which the Department will publish, along with the expected levels of performance.
- At the time of the annual evaluation of grantee performance, the expected levels of performance will be adjusted a second time using the latest available adjustment data. The evaluation will be based on the newly adjusted levels of performance. *See* preamble discussion of § 641.740.
- The same process will be followed for subsequent 2-year periods.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity.

Eight comments addressed the negotiation process. Several comments raised questions about the use of a statistical model based on WIOA to adjust grantee goals, and one, noting that SCSEP already uses such a model, questioned what changes the Department anticipates. This comment is correct that SCSEP has long used a statistical model to adjust grantee goals. The model considers environmental factors like rates of unemployment and poverty and takes account of participant characteristics that may make some participants harder to serve than others. This model is similar to the model employed by WIA and the model recently adopted by WIOA. The Department will re-examine this model to determine if additional aspects of the WIOA model should be incorporated into the SCSEP model or if other changes are appropriate. (One comment

suggested accounting for the percentage of participants who reside in rural areas.) The Department will provide the model to grantees prior to the first negotiations under the new performance measures, as requested by one of the comments.

One comment suggested that all grantees operating within a State should have the same goals because conditions within the State are essentially the same for all grantees. The statute requires that in negotiating goals, the parties consider both the expected levels of performance for other grantees and the promotion of continuous improvement. Both factors require consideration of the circumstances of each grantee. Furthermore, the only grantees operating within a State, in addition to the State grantee, are national grantees. National grantees only have goals at the overall grantee level, not at the State level. In addition, the adjustments that are made to grantee goals are based, to the greatest extent practicable, on factors that prevail in the specific service area of each grantee. Because very few grantees serve an entire State uniformly, SCSEP uses data at a county level to customize the adjustments for all grantees, both State and national.

Nine comments received during the consultation and additional comments received from three grantees after the consultation addressed the implementation of the new measures. Most of these questioned when the new measures would be effective and what the effect would be of collecting data for the new employment outcome measures and the old outcome measures since they will overlap for the first 4 quarters that the new measures are effective. The new measures being implemented by this IFR by promulgation on December 1, 2017 will become effective 30 days after publication. By effective, the Department means that they will be used during the second half of PY 2017, to negotiate the goals for PYs 2018 and 2019. Performance under the PY 2018 goals will begin to be reported starting July 1, 2018. The SCSEP Quarterly Progress Report (QPR) for PY 2017, will be based on the current measures, and the QPRs for PY 2018, will be based on the measures established in this IFR.

SCSEP participants who exit during PY 2017, when goals based on the current measures are still in effect, will have their performance reported under the old measures for PY 2017. For this same cohort of exiters, reporting for the core employment outcome measures would also take place throughout PY 2018, under the new measures set forth in this IFR and would be reflected in the grantees' PY 2018 QPRs. For example, a

participant who exits in Quarter 3 of PY 2017, will be included in the previous entered employment measure for Quarter 4 of PY 2017; this participant will also be reported in the IFR's new measure of employment in the second quarter after exit in Quarter 1 of PY 2018. Since the underlying data required for the new measures that will be reported in PY 2018 are the same data required for the existing measures, grantees will have to follow different timing rules for the collection of data in PY 2018, but they will not be required to collect any new or additional data beyond the data they would have reported under the old measures. The Department will provide technical assistance and guidance on the new timing and reporting requirements.

A related comment asked is when reporting on the current SCSEP additional measures would cease. As with the existing core measures, the grantees will collect data for the additional measures not carried forward in this IFR throughout PY 2017, and the final QPR for PY 2017 will be the last report of the additional measures.

Many comments urged the Department to obtain the access to unemployment insurance (UI) wage records for SCSEP in order to ease the burden of case management follow-up for purposes of collecting performance data. One comment recommended that the Department allow those grantees that were able to access wage records locally do so even if other grantees could not have access and had to continue using case management follow-up. Another comment recommended that if the Department is unable to secure access to wage records, the Department should adopt less stringent standards for case management follow-up.

The Department understands that case management follow-up is a costly and not always effective means of obtaining performance data. The Department is investigating access to UI wage records for all SCSEP grantees, but until such access occurs, all grantees must continue using case management follow-up. Using different methods of data collection would compromise the consistency of the performance measures and would potentially provide an unfair advantage to those grantees with access to wage records. In the meantime, the Department will review the standards for case management follow-up as set forth in various guidance materials, will confer with grantees about the changes in procedures desired, and will issue revised guidance if appropriate.

Many comments questioned whether the current exclusions from exit for purposes of the employment outcome measures will be continued, and several recommended that they be continued. As part of its adoption of the WIA common measures in PY 2007, SCSEP has been following the WIA exclusions. With the 2016 OAA's adoption of the measures consistent with the WIOA primary indicators of performance, SCSEP will examine the revised WIOA exclusions and will issue revised guidance as appropriate.

Section 641.730 How will the Department assist grantees in the transition to the new core performance measures?

The Department has made several changes in this section to update the Department's transition assistance plans to correspond with the 2016 OAA. First, as a non-substantive change, the Department has deleted the designation of paragraph (a) and its title "General transition provision" because the Department has deleted paragraph (b), as discussed below. This section now includes only two sentences.

The first sentence as revised by this IFR now states that, as soon as practicable after the IFR becomes effective, the Department will determine whether a SCSEP grantee's performance under the measures in effect prior to the effective date of this IFR would have met the expected levels of performance for PY 2018. The second sentence as revised by this IFR now states that if the Department determines that a grantee would have failed to meet those expected levels of performance, then the Department will provide technical assistance to help the grantee to eventually meet the expected levels of performance under the measures in § 641.700, as those measures are revised by this IFR.

The Department will only make the above determination for the three new employment outcome measures, defined in § 641.710(b) through (d) of this IFR, since no transition is required for the remaining four core measures (three are unchanged, and for the fourth, the "indicators of effectiveness in serving employers, host agencies, and participants," the Department will use the same customer satisfaction measure that was used before the IFR). In making the determination, the Department intends to examine all relevant data, as feasible, in order to provide a cross-walk between the existing measures and the measures implemented in this IFR and to develop a new baseline from which to begin the development of goals for PY 2018 and PY 2019. The Department will

provide the analysis to all grantees as soon as it is complete.

As noted above, this IFR removes paragraph (b) from § 641.730, which provided that PY 2007 would be treated as a baseline year for the most-in-need indicator so that grantees and the Department may collect sufficient data to set a meaningful goal for the measure for PY 2008. Since this provision included dates that have already passed, and the Department has documented information on this measure, this provision is no longer required and has been deleted from this section.

Section 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

With the exception of the technical changes noted below, the Department has not made any changes to this section.

In paragraph (a), the Department has deleted the reference to national grantees because the evaluation process applies identically to both national grantees and State grantees. The Department has also added a reference to § 641.720(d) when referring to the adjustments to the grantee goals.

In paragraph (b)(1)(iii) regarding recompetition for national grantees, the Department has deleted the parenthetical "(beginning with Program Year 2007)," after "any national grantee that has failed to meet the expected levels of performance for 4 consecutive years" to align with the 2016 OAA, which removed this phrase from OAA sec. 513(d)(2)(B)(iii). Due to this deletion, the "4 consecutive years" may include years under the measures in effect prior to this IFR with years under the new measures implemented by this IFR.

In paragraph (b)(2)(iii) regarding competition for State grantees, the Department has deleted the parenthetical "(beginning with Program Year 2007)," after "if the Department determines that the State fails to meet the expected levels of performance for 3 consecutive Program Years" to align with the 2016 OAA, which removed this phrase from OAA sec. 513(d)(3)(B)(iii). Similar to the deletion in paragraph (b)(1)(iii), due to this deletion, the "3 consecutive years" may include years under the measures in effect prior to this IFR with years under the new measures implemented by this IFR.

In paragraph (c) regarding evaluation, the Department has revised this paragraph to state that, for purposes of evaluation, the core measures of

performance will be compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)). The Department has deleted the former provision that the core measures also would be compared to “the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance.” As discussed above, the Department has removed all references to “additional indicators” throughout part 641 to align with the 2016 OAA, which removed reference to additional indicators of performance not subject to goal-setting and corrective actions that were previously established in sec. 513(b)(2) of the 2006 OAA. This paragraph now states, “The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core measures of performance, compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)).”

One commenter questioned the impact of the new requirement to negotiate performance goals 2 years at a time on the assessment of grantee performance. Although the Department and the grantees will now negotiate performance goals for 2 years at a time, the Department will continue to assess whether grantees have met their expected level of performance at the end of each program year based on whether grantees have met their goals for that completed program year.

Two comments noted that SCSEP goals are already hard to meet because older workers are harder to place than other job seekers. SCSEP has been using the WIA common employment outcome measures since July 1, 2007; the replacement of those measures with the WIOA core employment measures is not intended to change the basic approach of the negotiation process or to negate the focus on serving low-income seniors. In general, SCSEP has consistently met or exceeded its performance goals under the current measures, and the Department does not envision that the new measures will change that level of performance.

Section 641.750 Will there be performance-related incentives?

The Department has updated the reference to the OAA to reflect the 2016 OAA reauthorization amendments.

III. Rulemaking Analyses and Notices

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the Department to evaluate the economic impact of this rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

There are 75 SCSEP grantees; 50 of these are States and are not small entities as defined by the RFA. Six grantees are governmental jurisdictions other than States (four grantees are territories such as Guam, one grantee is Washington, DC, and another grantee is Puerto Rico). Governmental jurisdictions must have a population of less than 50,000 to qualify as a small entity for RFA purposes and the population of these 6 SCSEP grantees each exceeds 50,000. The remaining 19 grantees are non-profit organizations, which includes some large national non-profit organizations.

The Department has determined that this Interim Final Rule will impose no additional burden on small entities affected. Since the alignment with WIOA involved only definitions, the grantees are not required to collect any additional information that may cause a burden increase. In addition, all costs are covered by the SCSEP program funds provided to grantees.

The Department certifies that this Interim Final Rule does not impose a significant economic impact on a substantial number of small entities.

Executive Order 12866

Under Executive Order 12866, the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant);

(2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. *Id.* OMB has determined that this interim final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866.

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

OMB declined review of this IFR because it is not a significant regulatory action. As previously noted, the alignment with WIOA involved only definitions, and grantees are not required to collect any additional information that may cause a burden increase.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide

the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

As part of its effort to streamline program performance reporting, the Department revised the Workforce Innovation and Opportunity Act (WIOA) Performance Accountability, Information and Reporting System (OMB Control Number 1205–0521) information collection by adding the performance information collection requirements for SCSEP. The Department notes that the SCSEP information collection will retain its current approval (under OMB Control Number 1205–0040) for data elements not contained in the revised WIOA Performance Accountability, Information and Reporting System.

The Department provided opportunities for the public to comment on the information collection through notices in the **Federal Register** that provided comment periods on the associated forms and instructions. This comment period provided at least 60 days for comments to be submitted to the agency. The ICRs was then submitted for OMB approval, and the Department published notices in the **Federal Register** that invited comments to be sent to OMB for a period lasting at least 30 days. The Department will publish a **Federal Register** Notice shortly to incorporate the information collection provisions of this Interim Final Rule.

The information collection is summarized as follows.

Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System

Agency: DOL–ETA.

Title of Collection: ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System.

Type of Review: Revision.

OMB Control Number: 1205–0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 17,532,542.

Estimated Total Annual Responses: 35,064,970.

Estimated Total Annual Burden Hours: 8,938,029.

Regulations sections: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610, § 641.700, § 641.710, § 641.720, § 641.730, § 641.740, § 641.750.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

Executive Order 13132

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This Interim Final Rule defines and implements performance measures for the SCSEP and while States are SCSEP grantees, this rule merely makes changes to data collection processes that are ongoing. Requiring State grantees to implement these changes does not constitute a “substantial direct effect” on the States, nor will it alter the relationship or responsibilities between the Federal and State governments.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This rule defines and details the performance measures use by the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal

governments. The order requires Federal agencies to take certain actions when regulations have “tribal implications.” Required actions include consulting with Tribal Governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this Interim Final Rule and concludes that it does not have tribal implications. While some tribes may be recipients of national SCSEP grantees, this rule will not have a substantial direct effect on those tribes because, as outlined in the Regulatory Flexibility Act section of the preamble above, there are only small cost increases associated with implementing this regulation. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and Tribal Governments. Accordingly, we conclude that this rule does not have tribal implications for the purposes of Executive Order 13175.

Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department’s NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this rule and determines that it will not have a negative effect on families. Indeed, we

believe the SCSEP strengthens families by providing job training and support services to low-income older Americans so that they can obtain fruitful employment and enjoy increased economic self-sufficiency.

Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, provides safeguards to individuals concerning their personal information that the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifiable information such as SSNs or names. Because SCSEP participant records are maintained by SSN, the Act applies here.

A key concern is for the protection of participant SSNs. Grantees must collect the SSN in order to properly pay participants for their community service work in host agencies. When participant files are sent to the Department for aggregation, the transmittal is protected by secure encryption. When participant files are retrieved within the internet-based SCSEP data management system of SPARQ, only the last four digits of the SSN are displayed. Any information that is shared or made public is aggregated by grantee and does not reveal personal information on specific individuals.

The Department works diligently to ensure the highest level of security whenever personally identifiable information is stored or transmitted. All contractors that have access to individually identifying information are required to provide assurances that they will respect and protect the confidentiality of the data. ETA's Office of Performance and Technology has been an active participant in the development and approval of data security measures—especially as they apply to SPARQ.

In addition to the above, a Privacy Act Statement is provided to grantees for distribution to all participants. The grantees were advised of the requirement in ETA's Older Worker Bulletin OWB-04-06. Participants receive this information when they meet with a case worker or intake counselor. When the programs are monitored, implementation of this term is included in the review.

Executive Order 12630

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this Interim Final Rule in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs-labor, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor amends 20 CFR part 641 as follows:

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

- 1. Revise the authority citation for part 641 to read as follows:

Authority: 42 U.S.C. 3056 *et seq.*; Pub. L. 114–144, 130 Stat. 334 (Apr. 19, 2016).

- 2. Amend § 641.100 by revising the introductory text and paragraph (b) to read as follows:

Subpart A—Purpose and Definitions

§ 641.100 . What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under title V of the Older Americans Act (OAA), 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Reauthorization Act of 2016, Public Law 114–144 (Apr. 19, 2016). This part and other pertinent regulations set forth the regulations applicable to the SCSEP.

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128 (July 22, 2014). These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop delivery system.

- 3. Amend § 641.140 as follows:

- a. Remove the definition of “Additional indicators”.
- b. Add the definition of “Career services,” in alphabetical order.
- c. Revise the definition of “Co-enrollment”.
- d. Add the definition of “Community Service Employment” in alphabetical order.
- e. Remove the definition of “Core indicators”.
- f. Add the definition of “Core measures” in alphabetical order.
- g. Remove the definitions of “Core services” and “Intensive services”.
- h. Revise the definition of “Local Board”.
- i. Add the definition of “Local Workforce Development Area” in alphabetical order.
- j. Remove the definition of “Local Workforce Investment Area or local area”.
- k. Revise the definitions of “Most-in-need,” “One-Stop Center,” “One-Stop delivery system,” “One-Stop partner,” “Pacific Island and Asian Americans,” “State Board,” “Supportive services,” “Training services,” and “Unemployed”.
- l. Remove the definition of “Volunteer work”.
- m. Add the definitions of “Workforce Innovation and Opportunity Act (WIOA),” and “Workforce Innovation and Opportunity Act (WIOA) regulations” in alphabetical order.
- n. Remove the definitions of “Workforce Investment Act (WIA),” and “Workforce Investment Act (WIA) regulations”.

The additions and revisions read as follows:

§ 641.140 What definitions apply to this part?

* * * * *

Career services means those services described in sec. 134(c)(2) of WIOA.

Co-enrollment applies to any individual who meets the qualifications for SCSEP participation and is also enrolled as a participant in WIOA or another employment and training program, as provided in the Individual Employment Plan (IEP).

* * * * *

Community Service Employment means part-time, temporary employment paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (OAA sec. 518(a)(2).) The term community service assignment is used interchangeably with community service employment.

* * * * *

Core measures means hours (in the aggregate) of community service employment; the percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project; the percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project; the median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project; indicators of effectiveness in serving employers, host agencies, and project participants; the number of eligible individuals served; and most-in-need (the number of individuals described in sec. 518(a)(3)(B)(ii) or (b)(2) of the OAA). (OAA sec. 513(b)(1).)

* * * * *

Local Board means a Local Workforce Development Board established under sec. 107 of the Workforce Innovation and Opportunity Act.

Local Workforce Development Area or *local area* means an area designated by the Governor of a State under sec. 106 of the Workforce Innovation and Opportunity Act.

* * * * *

Most-in-need means participants with one or more of the following characteristics: Have a severe disability; are frail; are age 75 or older; are age-eligible but not receiving benefits under title II of the Social Security Act; reside in an area with persistent unemployment and have severely limited employment prospects; have limited English proficiency; have low literacy skills; have a disability; reside in a rural area; are veterans; have low employment prospects; have failed to find employment after using services provided under title I of the Workforce Innovation and Opportunity Act; or are homeless or at risk for homelessness. (OAA sec. 513(b)(1)(F).)

* * * * *

One-Stop Center means the One-Stop Center system in a WIOA local area, which must include a comprehensive One-Stop Center through which One-Stop partners provide applicable career services and which provides access to other programs and services carried out by the One-Stop partners. (See WIOA sec. 121(e)(2).)

One-Stop delivery system means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to career services are available regardless of where the individuals initially enter the workforce

development system. (See WIOA sec. 121(e)(2).)

One-Stop partner means an entity described in sec. 121(b)(1) of the Workforce Innovation and Opportunity Act, *i.e.*, required partners, or an entity described in sec. 121(b)(2) of the Workforce Innovation and Opportunity Act, *i.e.*, additional partners.

* * * * *

Pacific Island and Asian Americans means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA sec. 518(a)(6).)

* * * * *

State Board means a State Workforce Development Board established under WIOA sec. 101.

* * * * *

Supportive services means services, such as transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, housing, including temporary shelter, follow-up services, and needs-related payments, which are necessary to enable an individual to participate in activities authorized under the SCSEP. (OAA secs. 502(c)(6)(A)(iv) and 518(a)(8).)

* * * * *

Training services means those services authorized by WIOA sec. 134(c)(3).

* * * * *

Unemployed means an individual who is without a job and who wants and is available for work, including an individual who may have occasional employment that does not result in a constant source of income. (OAA sec. 518(a)(9).)

* * * * *

Workforce Innovation and Opportunity Act (WIOA) means the Workforce Innovation and Opportunity Act, Public Law 113–128 (July 22, 2014), as amended.

Workforce Innovation and Opportunity Act (WIOA) regulations means the regulations in parts 675 through 688 of this chapter, the Wagner-Peyser Act regulations in parts 651 through 654 and part 658 of this chapter, and the regulations implementing WIOA sec. 188 in 29 CFR part 38.

■ 4. Revise subpart B to read as follows:

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

Sec.

641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?

641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?

641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

§ 641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?

The SCSEP is a required partner under the Workforce Innovation and Opportunity Act. As such, it is a part of the One-Stop delivery system. When acting in their capacity as WIOA partners, SCSEP grantees and sub-recipients are required to follow all applicable rules under WIOA and its regulations. See WIOA sec. 121(b)(1)(B)(v) and 20 CFR 678.400 through 678.440.

§ 641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?

In addition to providing career services, as defined at 20 CFR 678.430, SCSEP grantees and sub-recipients must make arrangements through the One-Stop delivery system to provide eligible and ineligible individuals with referrals to WIOA career and training services and access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. OAA title V resources may not be used to serve individuals who are not SCSEP-eligible. The Workforce Innovation and Opportunity Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. Although the overall effect is to provide universal access to

career services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. Note, however, that one allowable SCSEP cost is a SCSEP project's proportionate share of One-Stop costs. See § 641.850(d). Title V funds can be used to pay wages to SCSEP participants receiving career and training services under title I of WIOA provided that the SCSEP participants have each received a community service assignment. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIOA or other appropriate partner programs. WIOA sec. 121(b)(1). These arrangements should be negotiated in the Memorandum of Understanding (MOU), which is an agreement developed and executed between the Local Workforce Development Board, with the agreement of the chief local elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area. The MOU is further described in the WIOA regulations at 20 CFR 678.500 through 678.510.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

Yes, sec. 502(b)(3) of the OAA provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. (OAA sec. 502(b)(3).) These reciprocal arrangements and the contents of the SCSEP IEP and WIOA IEP should be negotiated in the MOU.

§ 641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

(a) Although SCSEP participants are not automatically eligible for career and training services under title I of WIOA, local boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult career and training services under title I of WIOA.

(b) SCSEP participants who have been assessed and for whom an IEP has been developed have received a career service under 20 CFR 680.220(a) of the WIOA regulations. In order to enhance skill development related to the IEP, it may be necessary to provide training

beyond the community service assignment to enable participants to meet their unsubsidized employment objectives. The SCSEP grantee or sub-recipient, the host agency, the WIOA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU. (See § 641.540 for a further discussion of training for SCSEP participants.)

Subpart C—The State Plan

■ 5. Revise § 641.300 to read as follows:

§ 641.300 What is the State Plan?

The State Plan is a plan, submitted by the Governor, or the highest government official, in each State, as an independent document or as part of the WIOA Combined State Plan, that outlines a 4-year strategy for the statewide provision of community service employment and other authorized activities for eligible individuals under the SCSEP as described in § 641.302. The State Plan also describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees and sub-recipients operating within the State and to facilitate the efforts of stakeholders, including State and local boards under WIOA, to work collaboratively through a participatory process to accomplish the SCSEP's goals. (OAA sec. 503(a)(1).) The State Plan provisions are listed in § 641.325.

■ 6. Amend § 641.302 by revising paragraphs (f) and (g) to read as follows:

§ 641.302 What is a four-year strategy?

* * * * *

(f) The State's strategy for continuous improvement in the level of performance for entry into unsubsidized employment;

(g) Planned actions to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIOA, including plans for using the WIOA One-Stop delivery system and its partners to serve individuals aged 55 and older;

* * * * *

■ 7. Amend § 641.315 by revising paragraph (a)(2) to read as follows:

§ 641.315 Who participates in developing the State Plan?

(a) * * *

(2) State and local boards under WIOA;

* * * * *

■ 8. Amend § 641.320 by revising paragraph (b) to read as follows:

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

* * * * *

(b) National grantees serving older American Indians, or Pacific Island and Asian Americans, with funds reserved under OAA sec. 506(a)(3), are exempted from the requirement to participate in the State planning processes under sec. 503(a)(9) of the OAA. Although these national grantees may choose not to participate in the State planning process, the Department encourages their participation. Only those grantees using reserved funds are exempt; if a grantee is awarded one grant with reserved funds and another grant with non-reserved funds, the grantee is required under paragraph (a) of this section to participate in the State planning process for purposes of the non-reserved funds grant.

■ 9. Amend § 641.325 by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 641.325 What information must be provided in the State Plan?

* * * * *

(c) The current and projected employment opportunities in the State (such as by providing information available under sec. 15 of the Wagner-Peyser Act (29 U.S.C. 49l–2) by occupation), and the types of skills possessed by eligible individuals;

(d) The localities and populations for which projects of the type authorized by OAA title V are most needed;

(e) Actions taken and/or planned to coordinate activities of SCSEP grantees in the State with activities carried out in the State under title I of WIOA;

(f) A description of the process used to obtain advice and recommendations on the State Plan from representatives of organizations and individuals listed in § 641.315, and advice and recommendations on steps to coordinate SCSEP services with activities funded under title I of WIOA from representatives of organizations listed in § 641.335;

* * * * *

■ 10. Revise § 641.335 to read as follows:

§ 641.335 How should the Governor, or the highest government official, address the coordination of SCSEP services with activities funded under title I of WIOA?

The Governor, or the highest government official, must seek the advice and recommendations from representatives of the State and local

area agencies on aging in the State and the State and local boards established under title I of WIOA. (OAA sec. 503(a)(2).) The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIOA. (OAA sec. 503(a)(4)(F).) The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop delivery system and the steps that will be taken to encourage and improve coordination with the One-Stop delivery system.

- 11. Amend § 641.365 by revising paragraph (a) to read as follows:

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

(a) Governors, or highest government officials, must describe in the State Plan the steps that are being taken to comply with the statutory requirement to avoid disruptions in the provision of services for participants. (OAA sec. 503(a)(7).)

* * * * *

- 12. Add § 641.370 to subpart C to read as follows:

§ 641.370 May a State incorporate its 4-year plan for SCSEP into a Combined State Plan under WIOA?

Yes. A State may include its 4-year plan for SCSEP in its WIOA Combined State Plan according to the requirements in 20 CFR 676.140 through 676.145. For a State that obtains approval of that Combined State Plan under 20 CFR 676.143, the requirements of sec. 103 of WIOA and 20 CFR part 676 will apply in lieu of sec. 503(a) of the OAA and this subpart, and any reference in this part to a “State Plan” will be considered to be a reference to that Combined State Plan.

Subpart D—Grant Application and Responsibility Review Requirements for State and National SCSEP Grants

- 13. Amend § 641.410 by revising paragraph (c) to read as follows:

§ 641.410 How does an eligible entity apply?

* * * * *

(c) *State applicants.* A State that submits a Combined State Plan under sec. 103 of WIOA may include the State’s SCSEP grant application in its Combined State Plan. Any State that submits a SCSEP grant application as part of its WIOA Combined State Plan must address all of the application requirements as published in the Department’s instructions. Sections

641.300 through 641.370 address State Plans and modifications.

Subpart E—Services to Participants

- 14. Revise § 641.500 to read as follows:

§ 641.500 Who is eligible to participate in the SCSEP?

Anyone who is at least 55 years old, unemployed (as defined in § 641.140), and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by OMB (Federal poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 518(a)(3), (9).) A person with a disability may be treated as a “family of one” for income eligibility determination purposes at the option of the applicant.

- 15. Revise § 641.512 to read as follows:

§ 641.512 May grantees and sub-recipients enroll otherwise eligible job ready individuals and place them directly into unsubsidized employment?

No, grantees and sub-recipients may not enroll as SCSEP participants job-ready individuals who can be directly placed into unsubsidized employment. Such individuals should be referred to an employment provider, such as the One-Stop Center for job placement assistance under WIOA or another employment program.

- 16. Amend § 641.535 by revising paragraphs (a)(2)(ii), (a)(3)(i), and (a)(7) to read as follows:

§ 641.535 What services must grantees and sub-recipients provide to participants?

(a) * * *

(2) * * *

(ii) Performing an initial assessment upon program entry, unless an assessment has already been performed under title I of WIOA as provided in § 641.230. Subsequent assessments may be made as necessary, but must be made no less frequently than two times during a 12-month period (including the initial assessment);

(3)(i) Using the information gathered during the initial assessment to develop an IEP that includes an appropriate employment goal for each participant, except that if an assessment has already been performed and an IEP developed under title I of WIOA, the WIOA assessment and IEP will satisfy the requirement for a SCSEP assessment and IEP as provided in § 641.230;

* * * * *

(7) Providing appropriate services for participants, or referring participants to

appropriate services, through the One-Stop delivery system established under WIOA (OAA sec. 502(b)(1)(O));

* * * * *

- 17. Amend § 641.540 by revising paragraph (c) to read as follows:

§ 641.540 What types of training may grantees and sub-recipients provide to SCSEP participants in addition to the training received at a community service assignment?

* * * * *

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, online instruction, and on-the-job experiences. Training may be provided by the grantee or through other arrangements, including but not limited to, arrangements with other workforce development programs such as WIOA. (OAA sec. 502(c)(6)(A)(ii).)

* * * * *

- 18. Amend § 641.545 by revising paragraph (a) to read as follows:

§ 641.545 What supportive services may grantees and sub-recipients provide to participants?

(a) Grantees and sub-recipients are required to assess all participants’ need for supportive services and to make every effort to assist participants in obtaining needed supportive services. Grantees and sub-recipients may provide directly or arrange for supportive services that are necessary to enable an individual to successfully participate in a SCSEP project, including but not limited to payment of reasonable costs of transportation; health and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; dependent care; housing, including temporary shelter; needs-related payments; and follow-up services. (OAA secs. 502(c)(6)(A)(iv), 518(a)(8).)

* * * * *

- 19. Amend § 641.565 by revising paragraph (a)(1)(ii) to read as follows:

§ 641.565 What policies govern the provision of wages and benefits to participants?

(a) * * *

(1) * * *

(ii) SCSEP participants may be paid the highest applicable required wage while receiving WIOA career services.

* * * * *

Subpart F—Pilot, Demonstration, and Evaluation Projects

■ 20. Amend § 641.630 by revising the section heading and paragraph (b)(2) to read as follows:

§ 641.630 What pilot, demonstration, and evaluation project activities are allowable under the Older Americans Act?

* * * * *

(b) * * *

(2) Improve the provision of services to eligible individuals under One-Stop delivery systems established under title I of WIOA;

* * * * *

■ 21. Revise subpart G to read as follows:

Subpart G—Performance Accountability

Sec.

641.700 What performance measures apply to Senior Community Service Employment Program grantees?

641.710 How are the performance measures defined?

641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

641.730 How will the Department assist grantees in the transition to the new core performance measures?

641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

641.750 Will there be performance-related incentives?

Subpart G—Performance Accountability

§ 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

(a) *Measures of performance.* There are seven core performance measures. Core measures (defined in § 641.710) are subject to goal-setting and corrective action (described in § 641.720); that is, performance level goals for each core measure must be agreed upon between the Department and each grantee as described in § 641.720, and if a grantee fails to meet the performance level goals for the core measures, that grantee is subject to corrective action.

(b) *Core measures.* Section 513(b)(1) of the OAA establishes the following core measures of performance:

(1) Hours (in the aggregate) of community service employment;

(2) The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(3) The percentage of project participants who are in unsubsidized

employment during the fourth quarter after exit from the project;

(4) The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(5) Indicators of effectiveness in serving employers, host agencies, and project participants;

(6) The number of eligible individuals served; and

(7) The number of most-in-need individuals served (the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2)).

(c) *Affected entities.* The core measures of performance are applicable to each grantee without regard to whether such grantee operates the program directly or through sub-contracts, sub-grants, or agreements with other entities. Grantees must assure that their sub-grantees and lower-tier sub-grantees are collecting and reporting program data.

(d) *Required evaluation and reporting.* An agreement to be evaluated on the core measures of performance is a requirement for application for, and is a condition of, all SCSEP grants.

§ 641.710 How are the performance measures defined?

The core measures are defined as follows:

(a) “Hours of community service employment” is defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee’s grant, after adjusting for differences in minimum wage among the States and areas. Paid training hours are excluded from this measure.

(b) “The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(c) “The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project” is defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(d) “The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: The wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter.

(e) “Indicators of effectiveness in serving employers, host agencies, and project participants” is defined as the combined results of customer assessments of the services received by each of these three customer groups.

(f) “The number of eligible individuals served” is defined as the total number of participants served divided by a grantee’s authorized number of positions, after adjusting for differences in minimum wage among the States and areas.

(g) “Most-in-need” or the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2) is defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served. Participants are characterized as most-in-need if they:

- (1) Have a severe disability;
- (2) Are frail;
- (3) Are age 75 or older;
- (4) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);
- (5) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;
- (6) Have limited English proficiency;
- (7) Have low literacy skills;
- (8) Have a disability;
- (9) Reside in a rural area;
- (10) Are veterans;
- (11) Have low employment prospects;
- (12) Have failed to find employment after utilizing services provided under title I of the Workforce Innovation and Opportunity Act; or
- (13) Are homeless or at risk for homelessness.

§ 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

(a) *First 2 years.* Before the beginning of the first program year of the grant, each grantee must reach agreement with the Department on levels of performance for each measure listed in § 641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account

the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section.

The levels agreed to will be considered the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(b) *Third and fourth year.* Each grantee must reach agreement with the Department prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in § 641.700, for each of the third and fourth program years so covered. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. The levels agreed to will be considered to be the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(c) *Factors.* In reaching the agreements described in paragraphs (a) and (b) of this section, each grantee and the Department must:

(1) Take into account how the levels involved compare with the expected levels of performance established for other grantees;

(2) Ensure that the levels involved are adjusted, using an objective statistical model based on the model established by the Secretary of Labor with the Secretary of Education in accordance with sec. 116(b)(3)(A)(viii) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)(3)(A)(viii)); and

(3) Take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds.

(d) *Adjustments based on economic conditions and individuals served during the program year.* The Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2) of this section, adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year.

§ 641.730 How will the Department assist grantees in the transition to the new core performance measures?

As soon as practicable after January 2, 2018, the Department will determine if a SCSEP grantee's performance under the measures in effect prior to January 2, 2018 would have met the expected levels of performance for the Program Year 2018. If the Department determines that the grantee would have failed to meet the Program Year 2018 expected levels of performance, the Department will provide technical assistance to help the grantee to transition to eventually meet the expected levels of performance under the measures in § 641.700.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

(a) *Aggregate calculation of performance.* Not later than 120 days after the end of each program year, the Department will determine if a grantee has met the expected levels of performance including any adjustments to such levels made in accordance with § 641.720(d) by aggregating the grantee's core measures. The aggregate is calculated by combining the percentage of goal achieved on each of the individual core measures to obtain an average score. A grantee will fail to meet its performance measures when it does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core measures. Performance in the range of 80 to 100 percent constitutes meeting the level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

(b) *Consequences—(1) National grantees.* (i) If the Department determines that a national grantee fails to meet the expected levels of performance in a program year, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require such grantee to submit a corrective action plan not

later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next program year.

(iii) Any national grantee that has failed to meet the expected levels of performance for 4 consecutive years will not be allowed to compete in the subsequent grant competition, but may compete in the next grant competition after that subsequent competition.

(2) *State grantees.* (i) If the Department determines that a State fails to meet the expected levels of performance, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require the State to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the State will take to meet the expected levels of performance in the next program year.

(iii) If the Department determines that the State fails to meet the expected levels of performance for 3 consecutive program years the Department will require the State to conduct a competition to award the funds allotted to the State under sec. 506(e) of the OAA for the first full program year following the Department's determination. The new grantee will be responsible for administering the SCSEP in the State and will be subject to the same requirements and responsibilities as had been the State grantee.

(c) *Evaluation.* The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core measures of performance, compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)). The results of the Department's annual evaluation will be reported to Congress.

§ 641.750 Will there be performance-related incentives?

The Department is authorized by OAA secs. 502(e)(2)(B)(iv) and 517(c)(1) to use recaptured SCSEP funds to provide incentive awards. The Department will exercise this authority at its discretion.

Subpart H—Administrative Requirements

■ 22. Amend § 641.827 by revising paragraph (b) to read as follows:

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

* * * * *

(b) Recipients and sub-recipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 38 if:

(1) The recipient:

(i) Is a One-Stop partner listed in sec. 121(b) of WIOA, and

(ii) Operates programs and activities that are part of the One-Stop delivery system established under WIOA; or

(2) The recipient otherwise satisfies the definition of "recipient" in 29 CFR 38.4.

* * * * *

■ 23. Amend § 641.833 by revising paragraph (a) to read as follows:

§ 641.833 What policies govern political patronage?

(a) A recipient or sub-recipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as provided in § 641.827(b), certain recipients and sub-recipients of SCSEP funds are required to comply with WIOA nondiscrimination regulations in 29 CFR part 38. These regulations prohibit discrimination on the basis of political affiliation or belief.

* * * * *

■ 24. Amend § 641.850 by revising paragraph (d) to read as follows:

§ 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?

* * * * *

(d) *One-Stop costs.* Costs of participating as a required partner in the One-Stop delivery system established in accordance with sec. 121(e) of WIOA are allowable, provided that SCSEP services and funding are provided in accordance with the MOU required by WIOA and OAA sec. 502(b)(1)(O), and costs are determined in accordance with the applicable cost principles. The costs of services provided by the SCSEP, including those provided by participants/enrollees, may comprise a portion or the total of a SCSEP project's proportionate share of One-Stop costs.

* * * * *

Subpart I—Grievance Procedures and Appeals Process

■ 25. Amend § 641.910 by revising paragraph (d) to read as follows:

§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

* * * * *

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, sec. 504 of the Rehabilitation Act of 1973, sec. 188 of the Workforce Innovation and Opportunity Act (WIOA), or their implementing regulations, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIOA sec. 188 may be filed initially at the grantee level. See 29 CFR 38.69, 38.72. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 38.69 through 38.76 to resolve the complaint.

■ 26. Amend § 641.920 by revising paragraph (b) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR part 31 or 29 CFR part 38, as appropriate.

* * * * *

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2017-25834 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0995]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S168/Great Bridge bridge, which carries SR168 (Battlefield Boulevard South) over the Atlantic Intracoastal Waterway (AICW), Albemarle and Chesapeake Canal, mile

12.0, at Chesapeake, VA. The deviation is necessary to facilitate the Annual Chesapeake Rotary Christmas Parade. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 4 p.m. to 10 p.m., on Saturday, December 2, 2017.

ADDRESSES: The docket for this deviation, [USCG-2017-0995] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6557, email Michael.R.Thorogood@uscg.mil.

SUPPLEMENTARY INFORMATION: The City of Chesapeake, owner and operator of the S168/Great Bridge bridge that carries SR 168/Battlefield Boulevard South over the Atlantic Intracoastal Waterway (AICW), Albemarle and Chesapeake Canal, mile 12.0, at Chesapeake, VA, has requested a temporary deviation from the current operating regulations to ensure the safety of the increased volumes of spectators that will be participating in the Annual Chesapeake Rotary Christmas Parade on Saturday, December 2, 2017. This bridge is a double bascule drawbridge, with a vertical clearance of 8 feet above mean high water in the closed position and unlimited vertical clearance in the open position.

The current operating regulation is set out in 33 CFR 117.997(g). Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 4 p.m. to 6 p.m. and from 8 p.m. to 10 p.m. on Saturday, December 2, 2017.

The AICW, Albemarle and Chesapeake Canal, is used by a variety of vessels including U.S. government vessels, small commercial vessels, recreational vessels and tug and barge traffic. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local and Broadcast

Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 28, 2017.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2017-26072 Filed 11-29-17; 4:15 pm]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 6

[Docket No. PTO-T-2017-0040]

RIN 0651-AD27

International Trademark Classification Changes

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) issues a final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are effective January 1, 2018, and are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., ver. 2018), which is published by the World Intellectual Property Organization (WIPO).

DATES: This rule is effective on January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272-8946 or TMFRNotices@uspto.gov.

SUPPLEMENTARY INFORMATION:

Purpose: As noted above, this final rule incorporates classification changes adopted by the Nice Agreement that will become effective on January 1, 2018. This rule benefits the public by providing notice regarding these changes.

Summary of Major Provisions: The USPTO is revising § 6.1 in part 6 of title

37 of the Code of Federal Regulations to incorporate classification changes and modifications that will become effective January 1, 2018, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., 2018) (Nice Classification), published by WIPO.

The Nice Agreement is a multilateral treaty, administered by WIPO, which establishes the international classification of goods and services for the purposes of registering trademarks and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies to all applications filed on or after September 1, 1973, and their resulting registrations, for all statutory purposes. See 37 CFR 2.85(a). Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on the WIPO Web site, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and year of the effective date (e.g., “Nice Classification, 10th edition, version 2013” or “NCL 10-2013”). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another. New editions of the Nice Classification continue to be published electronically and include all changes adopted annually since the previous version, as well as goods or services transferred from one class to another or new classes that are created.

The annual revisions contained in this final rule consist of modifications to

the class headings that have been incorporated into the Nice Agreement by the Committee of Experts. Under the Nice Classification, there are 34 classes of goods and 11 classes of services, each with a class heading. Class headings generally indicate the fields to which goods and services belong. Specifically, this rule adds new, or deletes existing, goods and services from 10 class headings. The changes to the class headings further define the types of goods and/or services appropriate to the class. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to Article 1.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Regulatory Changes

The USPTO is revising § 6.1 as follows:

In Class 1, the wording “Chemicals used in industry, science and photography” is amended to “Chemicals for use in industry, science and photography.” “Manures;” is deleted where it appears as a separate clause. The wording “fire extinguishing compositions” is amended to “fire extinguishing and fire prevention compositions.” “Chemical substances for preserving foodstuffs;” is deleted. The wording “tanning substances” is amended to “substances for tanning animal skins and hides.” The wording “adhesives used in industry” is amended to “adhesives for use in industry;” and “putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science” is added thereafter.

In Class 2, a comma is inserted after “colorants,” the term “dyes” is added, and the wording and punctuation “inks for printing, marking and engraving;” is added thereafter. “Mordants;” is deleted.

“Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils;” is added to the beginning of Class 3, and the capital letter in “Bleaching” is changed to lower case. A semi-colon is deleted after “abrasive preparations” and the wording “non-medicated soaps; perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions; non-medicated dentifrices” is also deleted from the end of Class 3.

In Class 4, a comma is inserted after “greases” and the term “wax” is added thereafter. The wording and parentheses “(including motor spirit)” is deleted.

In Class 7, “Machines and machine tools” is amended to “Machines, machine tools, power-operated tools.” A

comma is added after “engines” and the parentheses around “except for land vehicles” are deleted. A comma is also inserted after “transmission components” and the parentheses around “except for land vehicles” are also deleted. The wording “agricultural implements other than hand-operated” is amended to “agricultural implements, other than hand-operated hand tools.”

In Class 8, “Hand tools and implements (hand-operated)” is amended to “Hand tools and implements, hand-operated.” The wording “side arms” is amended to “side arms, except firearms.”

In Class 16, “artists’ and drawing materials” is amended to “drawing materials and materials for artists.”

In Class 21, the wording “cookware and tableware, except forks, knives and spoons;” is added.

In Class 29, “edible oils and fats” is amended to “oils and fats for food.”

In Class 30, “(frozen water)” is added after the word “ice.”

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure,

or practice” (quoting 5 U.S.C. 553(b)(A))).

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the

Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This final rule does not involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 37 CFR Part 6

Administrative practice and procedure, Classification, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 1. The authority citation for 37 CFR part 6 continues to read as follows:

Authority: Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

4. Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical use or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

7. Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

8. Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

9. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads, for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headgear.
26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; oils and fats for food.

30. Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice (frozen water).

31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

32. Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible

property and individuals; personal and social services rendered by others to meet the needs of individuals.

Dated: November 27, 2017.

Joseph D. Matal,

Associate Solicitor, performing the functions and duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2017-25880 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-16-P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017-8]

Secure Tests: Extension of Comment Period

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule with request for comments; extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its June 12, 2017 and November 13, 2017 interim rules, regarding changes to the special procedure for examining secure tests, and the creation of a new group registration option for secure tests, respectively.

DATES: The comment period for the interim rules, published on June 12, 2017 (82 FR 26850), and November 13, 2017 (82 FR 52224), is extended. Comments must be made in writing and must be received in the U.S. Copyright Office no later than January 31, 2018.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://www.copyright.gov/rulemaking/securetests/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office for special instructions using the contact information below.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Sarang Vijay Damle,

General Counsel and Associate Register of Copyrights; Erik Bertin, Deputy Director of Registration Policy and Practice; or Abioye Ella Mosheim, Attorney-Advisor, by telephone at 202-707-8040 or by email at rkas@loc.gov, sdam@loc.gov, ebertin@loc.gov, and abmo@loc.gov.

SUPPLEMENTARY INFORMATION: As detailed in a June 12, 2017 interim rule,¹ the U.S. Copyright Office memorialized its special procedures for examining secure tests. As detailed in a November 13, 2017 interim rule,² the Office established a new group registration option for secure test questions. The Office is extending the December 11, 2017 deadline for the submission of written comments to allow greater time for public comment following implementation of the November 13, 2017 interim rule.

Dated: November 27, 2017.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2017-25859 Filed 11-30-17; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2002-0001; FRL-9971-32-Region 1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hatheway & Patterson Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is publishing a direct final Notice of Deletion of the Hatheway & Patterson Superfund Site (Site), located in Mansfield and Foxborough, Massachusetts, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Massachusetts, through Massachusetts Department of

¹ 82 FR 26850 (June 12, 2017).

² 82 FR 52224 (Nov. 13, 2017).

Environmental Protection (MassDEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective January 30, 2018 unless EPA receives adverse comments by January 2, 2018. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2002-0001, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Comments may also be submitted by email or mail to Kimberly White, Remedial Project Manager for Hatheway & Patterson Superfund Site, Office of Site Remediation and Restoration, Mail Code: OSRR07-1, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, email: white.kimberly@epa.gov or Emily Bender, Community Involvement Coordinator, Office of the Regional Administrator, Mail Code: ORA01-3, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, email: bender.emily@epa.gov. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the site information repositories.

Locations, contacts, phone numbers and viewing hours are: U.S. EPA Region 1, Superfund Records Center, 5 Post Office Square, Suite 100, Boston, MA 02109, Phone: 617-918-1440, Monday-Friday: 9:00 a.m.-5:00 p.m., Saturday and Sunday—Closed.

FOR FURTHER INFORMATION CONTACT: Kimberly White, Remedial Project Manager for Hatheway & Patterson Superfund Site, Office of Site Remediation and Restoration, Mail Code: OSRR07-1, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number: 617-918-1752, email address: white.kimberly@epa.gov or Emily Bender, Community Involvement Coordinator, Office of the Regional Administrator, Mail Code: ORA01-3, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number: 617-918-1037, email address: bender.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

I. Introduction

EPA Region 1 is publishing this direct final Notice of Deletion of the Hatheway & Patterson Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Hatheway & Patterson Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Massachusetts (the "state") prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Massachusetts Department of Environmental Protection (MassDEP), has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *The Sun Chronicle*, Attleboro, MA. The

newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repository identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Hatheway and Patterson Superfund Site (Site), known by EPA Site Identification Number: MAD001060805, is located in the towns of Mansfield and Foxborough, Massachusetts. Approximately 36 acres of the Site are located in the Town of Mansfield, which is zoned for commercial/industrial use. The remaining 1.77 acres are located in the Town of Foxborough, also zoned for commercial use. The Site is bisected by the Rumford River, which runs north to south, and by a railroad right-of-way, which runs east to west.

Prior to the 1950's, the property was reportedly used for various activities, including railroad operations, coal storage, bulk chemical transfer, and storage of electric/utility poles and railroad ties. Beginning in 1952, wood treatment operations by Hatheway & Patterson Co., Inc. (Hatheway & Patterson) began. Operations at the Site included the preservation of wood sheeting, planking, timber, piling, poles and other wood products and included the use of pentachlorophenol (PCP),

creosote, fluoro-chrome-arsenate-phenol (FCAP) salts, chromated copper-arsenate (CCA) salts, and fire retardants, including Dricon™ (boric acid and anhydrous sodium tetraborate).

Contamination was initially discovered in 1972, when a tar seep (approximately 62 feet long and 6 inches thick) was discovered on the banks of the Rumford River on the southern portion of the property.

Following the initial discovery of contamination, Hatheway & Patterson took steps to control the "oily seepage" from 1973 to 1991. Hatheway & Patterson filed for bankruptcy in 1993, leading to a removal action by EPA in 1993–1995 to address the imminent hazard posed by abandoned chemicals and waste at the Site. The Site was placed on the National Priorities List (NPL) by publication in the **Federal Register** on September 5, 2002, 67 FR 56757.

Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigation and Feasibility Study were completed in 2005. As part of the investigation, soil, surface water, groundwater, sediments and fish tissue were evaluated. The primary contaminants identified at the Site were arsenic, dioxin, polycyclic aromatic hydrocarbons (PAHs), pentachlorophenol (PCP) and other semi-volatile organic compounds (SVOCs). Light Non-Aqueous Phase Liquid (LNAPL) hot spot areas/isolated pockets of free product and LNAPL-saturated subsurface soils were also detected throughout the Site.

The baseline human health risk assessment concluded that exposure to surface and subsurface soil was associated with an unacceptable human health risk outside EPA's acceptable risk range under current and future exposure scenarios. On-site overburden and bedrock groundwater was also associated with an unacceptable human health risk. The baseline ecological risk assessment concluded that there was not a substantial risk from exposure to site-related contaminants. The FS evaluated alternatives with various combinations of soil treatment technologies, excavation, off-site disposal of contaminants, consolidation of contaminated soil and sediments under a cap and institutional controls.

Selected Remedy

In September 2005, EPA issued a Record of Decision (ROD) that set forth the Selected Remedy at the Hatheway and Patterson Superfund Site to address current and future risks due to direct contact and incidental ingestion of soil

and risks to future users of groundwater. The Remedial Action Objectives (RAOs) for the Site outlined in the ROD were as follows:

Surface Soil—Prevent current and future users from ingesting or contacting surface soils contaminated with arsenic, dioxin, pentachlorophenol, benzo(a)pyrene, and other Site contaminants that pose a risk to human health.

Subsurface Soil—Prevent future users from ingesting or contacting subsurface soils contaminated with arsenic, dioxin, pentachlorophenol, benzo(a)pyrene, and other Site contaminants that pose a risk to human health.

LNAPL—Prevent further contaminant transfer from LNAPL to groundwater by reducing LNAPL source material in soil excavation/treatment areas. Prevent further migration of LNAPL to groundwater and surface water by removing free product "hotspots" to the extent feasible.

The Selected Remedy included: Demolition of buildings in and near Hatheway & Patterson's former manufacturing area; excavation and on-site consolidation of soils contaminated with arsenic and pentachlorophenol under a low-permeability cover, after being stabilized with cement to achieve leachability criteria; disposal of soil contaminated with dioxin and free product LNAPL at a licensed off-site facility; institutional controls to prohibit the use of Site groundwater and restrict land uses in a manner that ensures the protectiveness of the remedy as described in the ROD; long term monitoring of groundwater, surface water, sediment, as well as fish tissue analysis of specimens caught in the Rumford River; and Five-Year Reviews of the remedy.

Modifications to the remedy were documented in the 2011 Explanation of Significant Differences (ESD). Based on a zoning change for the Foxborough parcel from residential use to "Limited Industrial" use, and intended reuse of the parcel as a parking lot, EPA and MassDEP determined that the Foxborough parcel should be remediated to a Reasonably Anticipated Future Use of commercial/open space. Therefore, the cleanup level for arsenic was changed for this parcel, and it was then used as a consolidation area for soils contaminated with arsenic and covered with asphalt in order to facilitate the use of the parcel as a parking lot. The ESD also documented that PCP and arsenic-contaminated soils in the Mansfield portion of the Site were disposed at an off-site facility rather than consolidated on-site as described in the ROD. In addition, the ESD clarified the extent of institutional controls to be placed on the Site properties.

Response Actions

Through an Interagency Agreement with EPA Region 1, the U.S. Army Corps of Engineers New England District (USACE) performed the Selected Remedy. Remedial construction activities commenced in September 2009 and were substantially completed in September 2010. A total of 34,000 tons of soil was removed from the Northern Mansfield Property and the Foxborough Property and 9,500 tons of soil was removed from the eastern portion of the Southern Mansfield Property for off-site disposal to a RCRA subtitle C hazardous waste landfill, Envirosafe of Oregon, Ohio. Approximately 5,000 tons of soil exceeding arsenic cleanup levels were consolidated in the "Capped Consolidation Area" on the Foxborough Property under a multi-layer low-permeability barrier (*i.e.*, the asphalt cover). A small portion of land along the western boundary of the Foxborough Property, approximately 30 feet wide, was left unpaved. All portions of the Foxborough Property that are not part of the Capped Consolidation Area are referred to as the "Unpaved Area". The Unpaved Area of the Foxborough Property was cleaned-up to the same level that was being used in the rest of the Site in Mansfield that was zoned open space/commercial.

The properties owned by the towns of Mansfield and Foxborough have institutional controls in the form of Notice of Activity and Uses Limitations (NAULs), to prevent uncontrolled access to the remaining contamination. Institutional controls were also placed on the railroad right-of-way, owned by the Massachusetts Department of Transportation, in the form of signage to prevent the potential exposure to any future utility workers. The property owners are required comply with the institutional controls for the Site; this will be verified during the Five-Year Reviews.

Cleanup Levels

The source control remedy at the Site was performed in accordance with EPA-approved plans and specifications. No additional EPA construction is anticipated at the Site. The source control remedial cleanup levels (listed below) were set in the ROD based on commercial/open-space reuse:

Contaminant	Cleanup level (ppm)
Benzo(a)pyrene	2.1
Dioxin	0.001
Arsenic	16.0

Contaminant	Cleanup level (ppm)
Pentachlorophenol	90.0

During the remedial action, if contaminants of concern (COCs) were detected above the clean-up criteria listed above, excavation continued horizontally and vertically until either: (1) Post-excavation confirmatory samples met the clean-up criteria; (2) planned excavation limits along County Street and the railroad right of way were met, or (3) for vertical excavation, the water table was reached.

Post-excavation confirmatory sampling was performed in conjunction with excavation activities from the bottom of excavation and "clean" perimeter embankment and tested for the COCs. Generally, as excavation was completed in a grid cell area, confirmatory soil samples were collected from the bottom and sidewalls of the excavation. Bottom samples were comprised of a five-point composite sample collected from the center and four corners of the excavation cell. Sidewall samples were collected from the sidewalls of excavations when grids were adjacent to the Site perimeter. If excavation sidewalls were greater than three feet in depth, an additional sample was collected below this interval to the bottom of the excavation. All samples collected and analytical results are summarized in the Remedial Action Completion Report, dated August 2011.

*Operation and Maintenance**Institutional Controls*

Institutional controls in the form of enforceable Notices of Activity and Use Limitations (NAULs) were recorded with the deed on properties associated with the Site, as listed below:

Northern Mansfield Property, 35 County St., Mansfield, MA [Map 19 Lot 210, Book 6160 Page 89] (Northern Bristol County Registry of Deeds),

Southern Mansfield Property, Morrow St., Mansfield, MA [Map 18 Lot 230–235, Book 2164 Page 64] (Northern Bristol County Registry of Deeds), and

Foxborough Property, 41 County St., Foxborough, MA [Map 158 Lot 4060, Book 11412 Page 408] (Norfolk County Registry of Deeds).

The NAUL on each property specifies the current allowable and prohibited uses of the property, and establishes limits and conditions on the future uses of contaminated portions of the property. The restrictions are different for each property, but generally restrict the use of groundwater and subsurface soils where contamination remains on

the site. The NAUL provides information about the risks remaining at the Site for current and future owners and interest holders. The NAULs require that the site owner submit annual reports to EPA and MassDEP regarding the status of the ICs. EPA will also assess site conditions and interview town officials as part of the Five Year Review process to confirm that only the permitted uses have taken place on the restricted properties. Should there be violations of the restrictions contained in the NAUL, the state has the authority to take an enforcement action against any property owner.

In addition to NAULs, institutional controls in the form of signage were used along the railroad right-of-way that intersects the Site stating to contact the property owner before soils are disturbed. The signage along the railroad right-of-way will be inspected periodically at a minimum every five years as part of EPA's Five Year Review process and/or during regular operation and maintenance activities conducted by the state.

Long-Term Groundwater, Surface Water and Sediment Monitoring

The ROD required long-term monitoring of groundwater, surface water, fish tissue and sediment, and operation and maintenance of the low-permeability cover. As a result of changes to the remedy documented in the ESD, the Hatheway and Patterson Operation and Maintenance Manual, dated August 2017 requires semi-annual monitoring of groundwater following the first five-year review, and sampling of sediment and surface water at least once every five years following the second five-year review. The 2017 Operation and maintenance (O&M) Manual also provides an explanation for eliminating the fish tissue sampling requirement which is primarily due to the lack of fish in the Rumford River.

The ROD contains performance standards for on-site groundwater and for groundwater at the boundary of the Site. If monitoring indicates exceedances of the on-site groundwater performance standards, further evaluation of the impacts to surface water and sediments is needed. If monitoring indicates exceedances of the Site boundary groundwater performance standards, the ROD requires an evaluation of whether off-site receptors are at risk. MassDEP is the lead agency performing the O&M, including the groundwater, surface water and sediment monitoring for the Site.

Five-Year Review

Five-year reviews are required at the Site because hazardous substances will remain at the Site above concentration levels that would allow for unrestricted use and unrestricted exposure after the completion of all remedial actions. Pursuant to CERCLA Section 121(c), NCP Section 300.400(f)(4)(ii) and as provided in OSWER Directive 9355.7-03B-P, June 2001, Comprehensive Five-Year Review Guidance, EPA must conduct statutory five-year reviews at the Site. The purpose of these reviews is to evaluate whether the selected remedy remains protective of human health and the environment. These five-year reviews are required no less often than each five years after the initiation of the remedial action. EPA may terminate these reviews when no hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unrestricted use and unlimited exposure.

The first five-year review was conducted in 2014, and found that the remedy at the Hatheway & Patterson Superfund Site currently protects human health and the environment. Several issues were raised in the 2014 Five-Year Review and resolved as discussed below.

Institutional Controls: At the time of the 2014 Five-Year Review, institutional controls were not in place. Between 2015 and 2017, all institutional controls for the Site were implemented.

Sediment Sampling: An issue was noted with the sediment sampling locations. To address the issue additional sediment sampling was performed and the results showed contaminants concentrations in sediment at the Site remain protective of human health and the environment.

Fish Tissue and Surface Water Sampling: Fish tissue and surface water sampling were not performed as required by the ROD. To address this issue, the 2017 O&M Manual was written to reflect site conditions (a lack of fish in the Rumford River) and to require sediment and surface water monitoring at a minimum in conjunction with the five-year reviews.

Groundwater: Two issues related to groundwater were raised in the 2014 Five-Year review. First, to determine whether a detection of a contaminant of concern at an off-site well was site actual and persistent; and second, to evaluate whether the active irrigation wells outside the compliance boundary have impacted groundwater flow directions. To address the first issue, additional sampling was performed at the off-site well which showed the

contaminant was below state groundwater standards and was likely not site-related. To address the second issue, EPA compiled a technical memorandum documenting that the irrigations wells are not impacting groundwater flowpaths near the Site. Also, periodic groundwater monitoring will continue to confirm that off-site wells are not impacted.

The 2014 Five-Year Review found that the remedy at the Hatheway & Patterson Superfund Site protects human health and the environment because remediation of the soil (soil removal and on-site consolidation) has been completed to cleanup levels that are considered protective for the anticipated future use of the property, and there is no current use of on-site groundwater which is classified as non-potable. Institutional controls have been created and recorded to restrict inappropriate land uses (including use of groundwater) and protect the consolidation area cover. Operation and maintenance activities have been initiated and will ensure that the consolidation area and associated components of the remedy (e.g., groundwater monitoring wells) remain in good condition. In addition, monitoring of groundwater will continue to assess the protectiveness of the remedy.

Community Involvement

Throughout the Site's history, EPA has kept the community and other interested parties apprised of Site activities through informational meetings, fact sheets, press releases, and public meetings. A Community Relations Plan was established before remedial actions were performed at the Site to address issues of community concern and community relation activities conducted by EPA. Activities included providing information concerning the progress of remedial activities to interested citizens and allowing those individuals or groups an opportunity to provide comments as EPA conducts remedial activities at the Site. EPA also issued press releases announcing the start and conclusion of the five-year review and will continue to do so.

Determination That the Site Meets the Criteria for Deletion in the NCP

Remedial Design and Remedial Action (RD/RA) activities at the Site were consistent with the ROD and EPA RD/RA Statements of Work provided to USACE. RA plans for all phases of construction included a Quality Assurance Project Plan (QAPP) dated October 2009 and QAPP Revision 1,

dated March 2010. The QAPP incorporated all EPA and state quality assurance and quality control procedures and protocols (where necessary). All procedures and protocols were followed for soil, sediment, water, and air sampling during the RA. EPA analytical methods were used for all validation and monitoring samples during all RA activities. EPA has determined that the analytical results are accurate to the degree needed to assure satisfactory execution of the RA, and are consistent with the ROD and the RD/RA plans and specifications. All Institutional Controls are in place and currently EPA expects that no further Superfund response is needed to protect human health and the environment, except future Five Year Reviews.

Operation and maintenance (O&M) activities were agreed upon by EPA and the state following construction of the remedy. The operation and maintenance activities are documented in the 2017 O&M Manual. The state preforms O&M at the Site and will follow state quality assurance/quality control plans associated with the 2017 O&M plan.

This Site meets all the site completion requirements as specified in OSWER Directive 9320.2-09-A-P, Close Out Procedures for National Priorities List Sites. All cleanup actions specified in the ROD and ESD have been implemented. Confirmatory groundwater monitoring and institutional controls provide further assurance that the Site no longer poses any threats to human health or the environment. The only remaining activity to be performed is O&M that the state has guaranteed. Five year reviews and monitoring will also be conducted at the Site. A bibliography of all reports relevant to the completion of this Site under the Superfund program is in the administrative record for this deletion.

V. Deletion Action

The EPA, with concurrence of the Commonwealth of Massachusetts through the Department of Environmental Protection, has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective January 30, 2018 unless EPA receives adverse comments by January 2, 2018. If adverse comments are received within the 30-day public comment period, EPA will publish a

timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 18, 2017.

Deborah Szaro,

Acting Regional Administrator, Region 1.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by removing “MA”, “Hatheway and Patterson Company”, “Mansfield”.

[FR Doc. 2017–25937 Filed 11–30–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

RIN 2133–AB85

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (“MARAD”) is amending its regulations to implement amendments to the Maritime Security Act of 2003 by the National Defense Authorization Act for Fiscal Year 2013 (“NDAA 2013”), the Consolidated Appropriations Act, 2016 (“CAA 2016”), and the National Defense

Authorization Act for Fiscal Year 2016 (“NDAA 2016”). The revisions to the regulations, among other things, make changes to vessel eligibility for participation in the Maritime Security Program (“MSP”), authorize the extension of current MSP Operating Agreements, amend the procedures for the award of new MSP Operating Agreements, extend the MSP through 2025, update the MSP Operating Agreement payments and schedule of payments, and eliminate the Maintenance and Repair Pilot Program.

DATES: This final rule becomes effective on January 2, 2018.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904, electronic mail to William.G.McDonald@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 3508 of the NDAA 2013 authorized the extension of the Maritime Security Program through fiscal year 2025. Under section 3508, the Secretary of Transportation, acting through the Maritime Administrator, is authorized to offer to extend the existing 60 MSP Operating Agreements through fiscal year 2025. Section 3508 authorized a new payment schedule of increasing MSP Operating Agreement payments through fiscal year 2025. These payment amounts were subsequently updated by the CAA 2016 and the NDAA 2016. Section 3508 of the NDAA 2013 also provided a new procedure for awarding MSP Operating Agreements, including a new priority system for the award of operating agreements. Under the new priority, award will be first based on vessel type as determined by military requirements and then based on the citizenship status of the applicant. Section 3508 revised the procedure for the transfer of MSP Operating Agreements by eliminating the requirement to first offer an MSP Operating Agreement to a U.S. Citizen under 46 U.S.C. 50501. In addition, Section 3508 eliminated the procedure for early termination of MSP Operating Agreements based on the availability of replacement vessels. Section 3508 also eliminated the eligibility of Lighter Aboard Ship (LASH) vessels to participate in the MSP Fleet as a stand-alone category of vessel. The rule eliminates the Maintenance and Repair Pilot Program, which has sunset and was not extended by the NDAA 2013.

The rule also updates MARAD’s address for the purposes of submitting required reports and vouchers.

Rulemaking Analysis and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures. Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O.s. The Orders define “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.s.

A determination has been made that this rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis because the rulemaking will create no additional costs or new substantive burdens to participants in or applicants to the existing program as it addresses only new processing procedures.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Executive Order 13132 (Federalism)

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and it has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The revisions to the regulations, among other things, make changes to vessel eligibility for participation in the MSP, authorize the extension of current MSP Operating Agreements, amend the procedures for the award of new MSP Operating Agreements, update the MSP Operating Agreement payments and schedule of payments, and eliminate the Maintenance and Repair Pilot Program. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because MSP participants (13 in total) and applicants (11 in the most recent solicitation for applications) do not constitute a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

International Trade Impact Assessment

This rulemaking does not contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$156 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$156 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking updates the regulations due to amendments to the Maritime Security Act. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by OMB.

Comments on the Proposed Rule

In response to the agency's **Federal Register** document published on August 5, 2015 (80 FR 46527) seeking public comment on its proposed revisions to 46 CFR part 296, a total of five separate comment submissions were made by or on behalf of the following entities: APL Marine Services, Ltd. and its affiliated companies ("APL"), American Roll-on Roll-off Carrier Group Inc. ("ARC Group"), Schuyler Line Navigation Company, LLC, Liberty Global Logistics LLC, and the Transportation Trades Department, AFL-CIO ("TTD"). The agency responds below to all comments.

One commenter noted that 46 CFR 296.30(h)(2) of the existing regulations was omitted from the proposed rulemaking and should be retained in a final rule. We agree. The NDAA 2013 did not eliminate the provision permitting an owner or operator of an MSP vessel to transfer and register such a vessel under an acceptable foreign registry in the event sufficient funds are not appropriated for any fiscal year by the 60th day of that fiscal year. The text of 46 CFR 296.30(h)(2) is retained in the final rule.

The commenter also noted that the definition of Foreign Commerce unduly omitted certain services that were not affected by the NDAA 2013. We agree. While excluding from the definition of Foreign Commerce certain bulk carrying services, the NDAA 2013 did not otherwise substantively change the definition of Foreign Commerce. The proposed definition unnecessarily eliminated currently MSP-eligible services. Therefore, these existing services are retained in the final rule. The commenter also recommended amending 46 CFR 296.31(d)(2), to make that section more consistent with the text of 46 U.S.C. 53105(a) and the regulatory definition of Foreign Commerce of 46 CFR 296.2. We agree that 46 CFR 296.31(d)(2), as currently drafted, is inconsistent with 46 U.S.C. 53105(a) with its use of "foreign trade," an undefined term, instead of "foreign commerce" and thus may invite confusion. Accordingly, we are amending 46 CFR 296.31(d)(2) by replacing "foreign trade" with "foreign commerce" and retaining reference to the registry endorsement requirement.

Three commenters recommended increasing annual payments under the MSP. Two recommended an annual payment of \$5 million per vessel starting in fiscal year 2017. MSP payment amounts are established by statute. MARAD cannot adjust annual payment amounts without a corresponding legislative authorization.

Nevertheless, the increased payments authorized by the NDAA 2016 and CAA 2016 are included in the final rule.

Two commenters critiqued MARAD's administration of the MSP and made recommendations that would require significant amendments to our regulations. These recommendations are beyond the scope of the current rulemaking implementing the NDAA 2013, but will be considered in the event of a future rulemaking.

List of Subjects in 46 CFR Part 296

Assistance payments, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Maritime Administration amends 46 CFR part 296 as follows:

PART 296—MARITIME SECURITY PROGRAM (MSP)

■ 1. The authority citation for part 296 is revised to read as follows:

Authority: Pub. L. 108–136, Pub. L. 109–163, Pub. L. 112–239; 49 U.S.C. 322(a), 46 U.S.C. chapter 531, 49 CFR 1.93.

■ 2. Amend § 296.2 by:

- a. Revising the definitions of *Foreign Commerce*, *MSA 2003*, *Participating Fleet Vessel*, and *Section 2 Citizen*; and
- b. Removing the definition of *Lash Vessel*.

The revisions to read as follows:

§ 296.2 Definitions.

* * * * *

Foreign Commerce means a cargo freight service, including direct and relay service, operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement under 46 U.S.C. 12111 where the origination point or the destination point of any cargo carried is the United States, regardless of whether the vessel provides direct service between the United States and a foreign country, or commerce or trade between foreign countries.

* * * * *

MSA 2003 means the Maritime Security Act of 2003, as amended.

* * * * *

Participating Fleet Vessel means a vessel that—

(1) On October 1, 2015—

(i) Meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c) of the MSA; and

(ii) Is less than 20 years of age if the vessel is a tank vessel, or is less than 25 years of age for all other vessel types; and

(2) on December 31, 2014, is covered by an MSP Operating Agreement under 46 U.S.C. chapter 531.

* * * * *

Section 2 Citizen means a United States citizen within the meaning of 46 U.S.C. 50501, without regard to any statute that “deems” a vessel to be owned and operated by a United States citizen within the meaning of 46 U.S.C. 50501.

* * * * *

■ 3. Amend § 296.11 by revising paragraph (a)(3) to read as follows:

§ 296.11 Vessel requirements.

(a) * * *

(3) The vessel is self-propelled and—

(i) Is a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet; or

(ii) Is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

* * * * *

§§ 296.21, 296.22, 296.23 [Removed and reserved]

■ 4. Remove and reserve §§ 296.21 through 296.23.

■ 5. Revise § 296.24 to read as follows:

§ 296.24 Subsequent awards of MSP Operating Agreements.

(a) MARAD intends to ensure that all available MSP Operating Agreements are fully utilized at all times in order to maximize the benefit of the MSP. Accordingly, when an MSP Operating Agreement becomes available through termination by the Secretary or early termination by the MSP contractor, and no transfer under 46 U.S.C. 53105(e) is involved, MARAD will reissue the MSP Operating Agreement pursuant to the following criteria:

(1) The proposed vessel shall meet the requirements for vessel eligibility in 46 U.S.C. 53102(b);

(2) The applicant shall meet the vessel ownership and operating requirements for priority in 46 U.S.C. 53102(c); and

(3) Priority will be assigned on the basis of vessel type established by military requirements specified by the Secretary of Defense. After consideration of military requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title.

(b) MARAD shall allow an applicant at least 30 days to submit an application for a new MSP Operating Agreement.

(c) MARAD and USTRANSCOM will determine if the applications received form an adequate pool for award of a reissued MSP Operating Agreement. If so, MARAD will award a reissued MSP

Operating Agreement from that pool of qualified applicants in its discretion according to the procedures of paragraph (a) of this section, subject to approval of the Secretary of Defense. MARAD and USTRANSCOM may decide to open a new round of applications. MARAD shall provide written reasons for denying applications. In as much as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to any procurement law or the Federal Acquisition Regulations.

■ 6. Revise § 296.30 to read as follows:

§ 296.30 General conditions.

(a) *Approval*. The Secretary, in conjunction with the Secretary of Defense, may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels that are determined by the Secretary to be commercially viable and deemed by the Secretary of Defense to be militarily useful for meeting the sealift needs of the United States in time of war or national emergencies. The Secretary announced an initial award of 60 MSP Operating Agreements on January 12, 2005. In June 2014, the Secretary extended the term of all 60 MSP Operating Agreements through FY 2025.

(b) *Effective date*—(1) *General rule*. Unless otherwise provided, the effective date of an MSP Operating Agreement is October 1, 2005.

(2) *Exceptions*. In the case of an Eligible Vessel to be included in an MSP Operating Agreement that is on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Agreement (EPA) provided by 46 U.S.C. 53107, as amended, unless an earlier date is requested by the applicant, the effective date for an MSP Operating Agreement shall be:

(i) The expiration or termination date of the Government charter covering the vessel; or

(ii) Any earlier date on which the vessel is withdrawn from that charter, but not before October 1, 2005.

(c) *Replacement vessels*. A Contractor may replace an MSP vessel under an MSP Operating Agreement with another vessel that is eligible to be included in the MSP under section 296.11(a), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement vessel.

(d) *Termination by the Secretary*. If the Contractor materially fails to comply

with the terms of the MSP Operating Agreement:

(1) The Secretary shall notify the Contractor and provide a reasonable opportunity for the Contractor to comply with the MSP Operating Agreement;

(2) The Secretary shall terminate the MSP Operating Agreement if the Contractor fails to achieve such compliance; and

(3) Upon such termination, any funds obligated by the relevant MSP Operating Agreement shall be available to the Secretary to carry out the MSP.

(e) *Early termination by Contractor, generally.* An MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary not later than 60 days before the effective date of the proposed termination that the Contractor intends to terminate the MSP Operating Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments, and by its EPA for the full term, from October 1, 2005, through September 30, 2025, of the MSP Operating Agreement.

(f) [Reserved]

(g) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of MSA 2003, as amended, for that fiscal year, the Secretary will notify the Senate Committees on Armed Services and Commerce, Science, and Transportation, and the House of Representatives Committee on Armed Services, that MSP Operating Agreements for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Secretary of Defense, shall select the vessels to retain under MSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated, and each Contractor shall be released from its obligations under the MSP Operating Agreement. Final payments under the terminated MSP Operating Agreements shall be made in accordance with § 296.41. To the extent that funds are appropriated in a subsequent fiscal year, former MSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Contractor,

provided the MSP vessel remains eligible.

(h) *Release of vessels from obligations.* If sufficient funds are not appropriated for payments under an MSP Operating Agreement for any fiscal year by the 60th day of that fiscal year, then—

(1) Each vessel covered by a terminated MSP Operating Agreement is released from any further obligation under the MSP Operating Agreement;

(2) The owner and operator of a non-tank vessel may transfer and register the applicable vessel under foreign registry deemed acceptable by the Secretary and the SecDef, notwithstanding 46 U.S.C. chapter 561 and 46 CFR part 221;

(3) If section 902 of the Act is applicable to a vessel that has been transferred to a foreign registry due to a terminated MSP Operating Agreement, then that vessel is available to be requisitioned by the Secretary pursuant to section 902 of the Act; and

(4) Paragraph (h) of this section is not applicable to vessels under MSP Operating Agreements that have been terminated for any other reason.

(i) *Foreign transfer of vessel.* A Contractor may transfer a non-tank vessel to a foreign registry, without approval of the Secretary, if the Secretary, in conjunction with the Secretary of Defense, determines that the contractor will provide a replacement vessel:

(1) Of equal or greater military capability and of a capacity that is equivalent or greater as measured in deadweight tons, gross tons, or container equivalent units, as appropriate;

(2) That is a documented vessel under 46 U.S.C. chapter 121 by the owner of the vessel to be placed under a foreign registry; and

(3) That is not more than 10 years of age on the date of that documentation.

(j) *Transfer of MSP Operating Agreements.* A contractor under an MSP Operating Agreement may transfer the agreement (including all rights and obligations under the MSP Operating Agreement) to any person that is eligible to enter into the MSP Operating Agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an MSP Operating Agreement if the same legal entity with the same vessels remains the contracting party under the MSP Operating Agreement.

■ 7. Amend § 296.31 by revising paragraphs (a) and (d)(2) to read as follows:

§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 20 years, starting on October 1, 2005, and ending on September 30, 2025, but payments to Contractors are subject to annual appropriations each fiscal year. MARAD may enter into MSP Operating Agreements for a period less than the full term authorized under the MSA 2003, as amended.

* * * * *

(d) * * *

(2) *Operation:* Be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12111, and shall not otherwise be operated in the coastwise trade of the United States; and

* * * * *

■ 8. Amend § 296.32 by revising the introductory text to read as follows:

§ 296.32 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

* * * * *

■ 9. Revise § 296.40 to read as follows:

§ 296.40 Billing procedures.

Submission of voucher. For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its MSP Operating Agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 296.31(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 296.41(b) and (c). All submissions shall be forwarded to the Director, Office of Accounting, MAR-330, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

■ 10. Amend § 296.41 by revising paragraph (a) to read as follows:

§ 296.41 Payment procedures.

(a) *Amount payable.* An MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the

MSP Operating Agreement is in effect, for each Agreement Vessel, an annual payment equal to \$2,600,000 for FY 2006, FY 2007, FY 2008; \$2,900,000 for FY 2009, FY 2010, FY 2011; \$3,100,000 for FY 2012, FY 2013, FY 2014, and FY 2015; \$3,500,000 for FY 2016; \$4,999,950 for FY 2017; \$5,000,000 for FY 2018, FY 2019, and FY 2020; \$5,233,463 for FY 2021; and \$3,700,000 for FY 2022, FY 2023, FY 2024, and FY 2025. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraphs (b) and (c) of this section.

* * * * *

Subpart G—[Removed]

■ 11. Remove Subpart G, consisting of § 296.60.

Dated: November 28, 2017.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–25898 Filed 11–30–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

RIN 2133–AB86

Requirements To Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (“MARAD”) is amending its regulations which implement new requirements regarding certain large fishing industry vessels set forth in the American Fisheries Act of 1998 (“AFA”), as amended by the Coast Guard Authorization Act of 2010 (“CGAA”) and the Coast Guard and Maritime Transportation Act of 2012 (“CGMTA”). The revisions to the regulation adds two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, eliminates the 15-day application deadline for vessels whose fishery endorsements have become invalid, limits fishery endorsement eligibility for certain large fishing industry vessels, and eliminates certain exemptions for specific vessels that were deleted in the CGMTA. In addition, MARAD is revising its Large

Vessel Certification form to incorporate these new requirements.

DATES: This final rule becomes effective on January 2, 2018.

FOR FURTHER INFORMATION CONTACT:

Michael C. Pucci, Attorney Advisor, Division of Maritime Programs, Maritime Administration, at (202) 366–5320. You may send mail to Michael C. Pucci at Maritime Administration, 1200 New Jersey Avenue SE., MAR 222, W24–214, Washington, DC 20590–0001. You may send electronic mail to Michael.Pucci@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 602(a) of the CGAA added two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements found at 46 U.S.C. 12113(d): (1) Replaced or rebuilt vessels and (2) fish tender vessels. The CGAA also eliminated the 15-day application deadline for vessels whose fishery endorsements had become invalid. Exemptions from the large fishing industry vessel restrictions are found in our regulations at 46 CFR 356.47.

In addition, section 601(b)(2) of the CGAA repealed section 203(g) of the AFA, which exempted particular vessels from the ownership requirements of 46 U.S.C. 12113. These exempt vessels are currently listed in our regulations at 46 CFR 356.51.

Section 307 of the CGMTA (“Section 307”) added further restrictions on large vessels under 46 U.S.C. 12113(d) by limiting those vessels from participating in the non-AFA trawl catcher processor subsector.

Accordingly, MARAD is updating its regulations under 46 CFR part 356 to reflect these amendments to the AFA and 46 U.S.C. 12113.

In addition to updating our regulations under 46 CFR part 356, MARAD is revising its Large Vessel Certificate to reflect the amendments to 46 U.S.C. 12113. Owners of fishing industry vessels 165 feet or greater in registered length are required to submit a Large Vessel Certificate to MARAD on an annual basis under 46 CFR 356.47(e). The revisions to the form include provisions for the replacement and fish tender vessels as well as a provision that an AFA sector vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher-processor sector.

Finally, MARAD is amending 46 CFR 356.47(a) to update the statutory citation to the current code sections.

Rulemaking Analysis and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures. Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is “significant,” and, therefore, subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.

MARAD has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This

rulemaking has no substantial effect on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

We have analyzed this rulemaking for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, “Procedures for Considering Environmental Impacts,” 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use.

Therefore, no Statement of Energy Effects is required.

Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing “economically significant” rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this rulemaking is not economically significant, and will cause no environmental or health risk that disproportionately affects children.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

International Trade Impact Assessment

This rulemaking is not expected to contain standards-related activities that will create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires agencies to evaluate whether an Agency action would result in the expenditure by State, local, and

tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking updates the regulations with two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, removes certain exemptions relating to specific vessels, and adds restrictions on large vessels by limiting those vessels from participating in the non-AFA trawl catcher processor subsector. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Comments on the Proposed Rule

In response to the agency’s **Federal Register** document seeking public comment on its proposed revisions to 46 CFR part 356 published on June 10, 2014 (79 FR 33160), a total of three separate comment submissions were made by or on behalf of the following entities: Groundfish Forum, O’Hara Corporation, and the At-Sea Processors Association. The agency responds below to all comments.

Two commenters suggested that 46 CFR 356.47(b) be revised to clarify that the restrictions imposed by Section 307 apply to all the vessels listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (non-Amendment 80 AFA catcher-

processor vessels) regardless of which large vessel exemption the vessel falls under in 46 U.S.C. 12113(d)(2) in order to preserve the statutory distinction between the AFA and Amendment 80 sectors. To accomplish this, one of the commenters recommended adopting the technical advice provided by the National Oceanic and Atmospheric Administration (NOAA) to Congress during its consideration of Section 307. We acknowledge that Section 307 of the CGMTA is intended to codify and maintain the separation of the AFA sector from the non-AFA trawler sector as evidenced by statements of Senators Cantwell, Murkowski, and Begich in the Congressional Record and the text of the statute. 158 Cong. Rec. S7972 (Dec. 12, 2012). We note, however, that NOAA's technical advice that would have edited Section 307 to accomplish this separation was not ultimately adopted by Congress because the non-AFA trawler sector restrictions on AFA sector vessels were only inserted in the regional fishery management council provision and the replacement vessel exemptions to the large vessel prohibition of 46 U.S.C. 12113(d) (sections 12113(d)(2)(B) and (C), respectively). In light of the fact that the statutory amendments of Section 307 are sufficiently complete as to be self-executing, MARAD finds that the best way to implement the restrictions on AFA sector vessels consistent with the statutory language of Section 307 and Congressional intent is to insert the restrictions in our regulations as they appear in the statute. Nevertheless, to assure that the sector separation of section 307 is clear, MARAD is revising its Large Vessel Certificate (see below) to require all AFA sector vessels subject to the large vessel restrictions of 46 U.S.C. 12113(d) to certify that they are neither eligible nor participating in the non-AFA trawler sector. In order to be eligible for a fishery endorsement, all large fishing industry vessels subject to 46 U.S.C. 12113(d) must submit a Large Vessel Certificate under MARAD regulation 46 CFR 356.47.

Another commenter noted that the revisions to 46 CFR 356.47(b) omitted subsection (2) providing that a large vessel is still eligible for a fishery endorsement if it is not placed under foreign registry after October 1998. This omission was inadvertent. Neither the CGMTA nor the CGAA repealed this provision. The final rule will contain subsection (2).

Authority: 46 U.S.C. 12113(d).

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Maritime Administration amends 46 CFR part 356 as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

- 1. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; Pub. L. 114–74; 49 CFR 1.93.

- 2. Amend § 356.47 by revising paragraphs (a) through (c) to read as follows:

§ 356.47 Special requirements for large vessels.

(a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12113 if:

- (1) It is greater than 165 feet in registered length;
- (2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or
- (3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

- (1)(i) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; and
- (ii) The vessel is not placed under foreign registry after October 1998;
- (2) The vessel—
 - (i) Is either a rebuilt vessel or replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Pub. L. 105–277; 112 Stat. 2681–627);
 - (ii) Is eligible for a fishery endorsement under this section; and
 - (iii) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act

(title II of division C of Pub. L. 105–277; 112 Stat. 2681–625 *et seq.*) is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Pub. L. 108–447; 118 Stat. 2887)); or

(3) The vessel is a fish tender vessel that is not engaged in harvesting or processing of fish.

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that:

(1) The regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Pub. L. 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's authority; and

(2) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Pub. L. 105–277; 112 Stat. 2681–625 *et seq.*), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Pub. L. 108–447; 118 Stat. 2887)).

* * * * *

§ 356.51 [Amended]

- 3. Amend § 356.51 by removing paragraphs (a) through (d) and redesignating paragraphs (e) through (f) as new paragraphs (a) and (b), respectively.

Dated: November 28, 2017.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–25896 Filed 11–30–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****46 CFR Part 393****RIN 2133-AB84****Revision of the America's Marine Highway Program Regulations****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its America's Marine Highway Program (AMHP) regulations to implement provisions of the Coast Guard and Maritime Transportation Act of 2012 (CGMTA), the National Defense Authorization Act of 2016 (NDAA), and to clarify AMHP processes. The revisions expand the purpose of the AMHP to include promoting short sea transportation, update the definition of short sea transportation, and streamline the regulation to highlight procedures and resources available to program participants.

DATES: This final rule becomes effective on January 2, 2018.

FOR FURTHER INFORMATION CONTACT: Tim Pickering, Office of Marine Highways and Passenger Services, at (202) 366-0704, or via email at MH@dot.gov. You may send mail to Mr. Pickering at Office of Marine Highways and Passenger Services, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**Background**

What laws authorize the America's Marine Highway Program?

The Energy Independence and Security Act of 2007 (EISA) authorized the Secretary of Transportation (Secretary) to promulgate regulations to implement the AMHP. The Secretary of Transportation delegated authority to the Maritime Administrator to issue AMHP implementing regulations. On April 9, 2010, MARAD published in the **Federal Register** final regulations implementing the AMHP (75 FR 18101).

The Secretary, in consultation with the Environmental Protection Agency, submitted a Report to Congress in April 2011 that included a description of the benefits of the AMHP and activities conducted under the program. It also included recommendations for further legislative and administrative action that the Secretary considered appropriate.

In December 2012, the Coast Guard and Maritime Transportation Act of

2012 (CGMTA), which built on some of the ideas in the report, was signed into law. The CGMTA expanded the scope of the AMHP by adding the words "or to promote short sea transportation" to the existing purpose of reducing landside congestion. This added language expanded the focus of the AMHP to include efforts that increase utilization or efficiency of short sea transportation on designated Marine Highway Routes.

In November 2015, the National Defense Authorization Act for Fiscal Year 2016 added to the definition of short sea transportation, that is the subject of the AMHP, to include the carriage by a documented vessel of cargo that is: (1) Shipped in discrete units, or packages that are handled individually, palletized; or, (2) unitized for purposes of transportation or freight vehicles carried aboard commuter ferry boats.

Discussion

Why and how is MARAD revising the regulations?

As part of our routine systematic review of existing regulations, MARAD is updating its AMHP implementing regulations to conform to statutory changes and streamline the regulations for ease of use. Accordingly, the rule revises in full the AMHP implementing regulations to: (1) Add "promote short sea shipping" as a purpose of the AMHP; (2) re-designate "corridors, connectors, and crossings" as used in the rule as "Routes" for purposes of simplicity; (3) expand and clarify the definition of AMHP-eligible cargo to include discrete units or packages that are handled individually, palletized, or unitized as well as freight vehicles carried aboard commuter ferry boats; (4) add a requirement for the project sponsors to provide updates on project status; (5) expand the eligibility criteria for services and Routes that may participate in AMHP; (6) clarify criteria for Project Designation; and, (7) reorganize the regulations for ease of use.

What is the purpose of the AMHP?

Congress authorized the AMHP to promote short sea shipping by designating routes, also called Marine Highways, as a way to relieve congestion on America's roads and railways. Marine Highway designations are intended to assist the maritime industry in meeting national freight transportation needs. The AMHP encourages the use of marine transportation to reduce freight and passenger travel delays caused by congestion, reduce greenhouse gas

emissions, conserve energy, improve safety, and reduce landside infrastructure maintenance costs.

Congestion on the U.S. surface transportation system significantly impacts America's economic prosperity and way of life. Overall, the U.S. Department of Transportation (USDOT) estimates that congestion on our roads, bridges, railways, and in ports costs the United States as much as \$200 billion a year and projects that cargoes moving through our ports will nearly double over the next 15 years. Most of this additional cargo will ultimately move along our surface transportation corridors, many of which are already at or beyond capacity.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and USDOT policies and procedures, MARAD must determine whether a regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant regulatory action" as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MARAD has determined that this rulemaking is not considered a significant regulatory action under section 3(f) of E.O. 12866 and, therefore, it was not reviewed by OMB. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Public Law 104-121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs

and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Executive Order 13132 (Federalism)

MARAD analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and has determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD was not required to consult with State and local officials.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in E.O. 13175 (Consultation and Coordination with Indian Tribal Governments); therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has evaluated this rulemaking under Maritime Administrative Order (MAO) 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606

(March 22, 1985), which guides MARAD in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* MARAD has determined that this rulemaking is not a major action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4.05 of MAO 600–1. Section 4.05 reads, in pertinent part, "[c]ategorical exclusions are Maritime Administration actions or groups of actions that do not have a significant effect on the quality of the human environment, individually or cumulatively. Categorical exclusions do not require preparation of environmental documents. Appendix 1 of this order [MAO–600–1] describes the Maritime Administration's categorical exclusions." This action falls under Categorical Exclusion #3 because MARAD's revisions to the regulations "do not require a regulatory impact analysis under section 3 of Executive Order 12291 or do not have a potential to cause a significant effect on the environment . . ." MAO 600–1, App.1, pg. 1.

In accordance with section 4.05 and Appendix 2 of MAO 600–1, the Agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, MARAD finds that this regulatory revision is not a major Federal action significantly affecting the quality of the human environment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

International Trade Impact Assessment

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the USDOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking updates the regulations due to changes made by the CGMTA, the NDAA, and to clarify AMH program procedures. This rulemaking contains no new or amended information

collection or recordkeeping requirements that have been approved or require approval by OMB.

Comments on the Proposed Rule

In response to the agency's **Federal Register** document seeking public comment on its proposed revisions to 46 CFR part 393 published on January 11, 2017 (82 FR 3250), we received one comment from the Center for Biological Diversity (CBD). The commenter requests that MARAD analyze the revisions' impacts and the impacts of the AMHP as a whole under NEPA, and consult on impacts of the revisions to species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* Specifically, CBD requests that MARAD consider the impacts arising from increased shipping noise and risk of ship strikes to endangered and threatened marine species resulting from increased traffic as a result of the AMHP. CBD also requests that the revisions to the rule require proponents of individual AMH corridors and projects to prepare environmental assessments as a condition for designation. CBD further requests that the revisions to the rule also require MARAD to consult on impacts to ESA-listed species before designation.

Pursuant to the requirements of the CGMTA and NDAA, this rulemaking expands the purpose of the AMHP to promote short sea transportation, updates the definition of short sea transportation, and clarifies AMHP procedures highlighting resources available to program participants. CBD provided no specific comments with respect to the Agency's proposed changes in this rulemaking to conform the AMH implementing regulations to the relevant statutory amendments, and therefore CBD's comments are outside the scope of this rulemaking. Nevertheless, in response to CBD's comments, MARAD states that it complies with all environmental laws in the administration of its programs. All future project proposals under the AMHP will be reviewed in accordance with the requirements contained in NEPA and all applicable environmental laws.

In regard to CBD's request that MARAD analyze the environmental impacts of the revisions to the rule and the AMHP under NEPA and to participate in interagency consultation under the ESA for any impacts the revisions may have upon listed species, MARAD has performed the required environmental review for this rulemaking under NEPA and MAO 600-1 "Procedures for Considering Environmental Impacts."

In response to the agency's **Federal Register** document seeking public comment on its proposed revisions to 46 CFR part 393, we received one comment from the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) Transportation Trades Department (TDD). The comment offered their strong support for the proposed rule citing the need to address congested corridors, reduce shipping costs and improve safety. The commenter credited the AMHP with providing meaningful options for companies utilizing short sea shipping and for promoting job growth in the maritime industry. In addition, TDD noted challenges facing the maritime industry and MARAD in the areas of Title XI loan guarantees and potential double taxation of goods transported using domestic short sea shipping via the Harbor Maintenance Tax. Both of these areas of concern are outside of the scope of the AMH Program.

The Harbor Maintenance Tax (HMT) funds the Harbor Maintenance Trust Fund (HMTF) to fund port and harbor dredging activities by the Corps of Engineers. The HMT and HMTF are not managed by the Department of Transportation. Economic soundness is a key requirement and projects need to have a viable business case or the Maritime Administration cannot approve it. To date, no operators have applied for a Title XI loan guarantee for an AMH Project.

List of Subjects in 46 CFR Part 393

Vessels.

■ For the reasons stated in the preamble, the Maritime Administration revises 46 CFR part 393 to read as follows:

PART 393—AMERICA'S MARINE HIGHWAY PROGRAM

Subpart A—General Provisions

Sec.

393.1 Special definitions.

Subpart B—Marine Highway Route and Project Designations

393.2 Marine Highway Routes.

393.3 Marine Highway Projects.

Subpart C—Department of Transportation Efforts to Foster and Support America's Marine Highways

393.4 DOT Support for planning activities.

393.5 DOT Support for Marine Highway-related research.

393.6 America's Marine Highway Program Project grants.

Authority: Pub. L. 110-140, title XI, subtitle C, sections 1121-1123, 121 Stat. 1494; Pub. L. 112-213, title IV, section 405, 126 Stat. 1541; 49 CFR 1.92 and 1.93(a), 46 U.S.C. 55601, 55604, 55605.

Subpart A—General Provisions

§ 393.1 Special definitions.

For the purposes of this part:

(a) *Administrator* means the Maritime Administrator, Maritime Administration, U.S. Department of Transportation USDOT. The Administrator is responsible for administering the America's Marine Highway Program (AMHP) and making route and project recommendations to the Secretary.

(b) *Department* means the U.S. Department of Transportation.

(c) *Cargo* on a Marine Highway service means goods transported in commerce and generally refers to, but is not limited by, the types and kinds of cargo that are described in the definition of "Short sea transportation", in paragraph (k) of this section. Neither weight nor proportionality are considered under this definition. The term as used in this context is generally interchangeable with the term "Freight", defined in paragraph (d) of this section.

(d) *Freight* on a Marine Highway service means goods transported in commerce and generally refers to, but is not limited by, the types and kinds of cargo that are described in the definition of "Short sea transportation", in paragraph (k) of this section. Neither weight nor proportionality are considered under this definition. The term as used in this context is generally interchangeable with the term "Cargo", defined in paragraph (c) of this section.

(e) *Marine Highway Routes* or *Routes* mean commercially navigable coastal, inland, and intracoastal waters of the United States as designated by the Secretary. This includes connections between U.S. ports and Canadian ports on the Great Lakes-Saint Lawrence Seaway System, and non-contiguous U.S. ports. Marine Highway Routes are a component of the Nation's surface transportation system. Each Marine Highway Route is described in terms of the specific landside transportation routes (road or railway) that it supplements or to which it connects. All previously designated Marine Highway "corridors," "connectors," and "crossings" are now designated as "Routes."

(f) *Marine Highway Projects* are planned or contemplated new services, or expansions of existing services, on designated Marine Highway Routes, that seek to provide new modal choices to shippers, reduce transportation costs, and/or provide public benefits, which include reduced air emissions, reduced road maintenance costs, and improved safety and resiliency impacts. Project

Applicants propose projects and the Secretary may designate projects consistent with this part.

(g) *Project Applicant* means a public entity with operations, or administrative areas of responsibility, that are adjacent to or near the relevant Route that applies for designation of a Marine Highway Project pursuant to this part. Eligible applicants include State governments (including State departments of transportation), metropolitan planning organizations, port authorities and tribal governments.

(h) *Program Office* means Office of Marine Highways and Passenger Services.

(i) *Route Sponsors* are public entities with operations or administrative areas of responsibility that are adjacent to or related to the relevant Route that recommend a commercially navigable waterway for designation as a Marine Highway Route. Eligible Route Sponsors include State governments (including State departments of transportation), metropolitan planning organizations, port authorities, non-Federal navigation districts and tribal governments.

(j) *Secretary* means the Secretary of Transportation.

(k) *Short sea transportation* means the carriage by a U.S. documented vessel of cargo—

(1) That is—

(i) Contained in intermodal cargo containers and loaded by crane on the vessel;

(ii) Loaded on the vessel by means of wheeled technology;

(iii) Shipped in discrete units or packages that are handled individually, palletized, or unitized for purposes of transportation; or

(iv) Freight vehicles carried aboard commuter ferry boats; and

(2) That is—

(i) Loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System; or,

(ii) Loaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System and unloaded at a port in the United States.

(l) *United States documented vessel* means a vessel documented under 46 CFR part 67.

Subpart B—Marine Highway Route and Project Designations

§ 393.2 Marine Highway Routes.

(a) *What are the minimum eligibility requirements for MARAD to recommend a Marine Highway Route for the Secretary to designate?*

(1) MARAD may recommend Marine Highway Routes that relieve landside congestion along coastal corridors or that promote short sea transportation; and

(2) That advance the objectives of the AMHP in paragraph (c) of this section.

(b) *When can a Route Sponsor request designation of a Marine Highway Route?*

(1) The Department accepts Marine Highway Route designation requests any time. Route Sponsors must submit designation requests through the Program Office.

(2) The Maritime Administration publishes all designated Routes on its Web site. Go to <http://www.marad.dot.gov> and search “America’s Marine Highways” to see the current list.

(c) *What should Route Sponsors consider when preparing Marine Highway Route designation requests?*

(1) Route Sponsors designation requests should explain how a proposed route will help achieve the following objectives:

(i) Establishing Marine Highway Routes as extensions of the national surface transportation system;

(ii) Developing multi-jurisdictional coalitions and partnerships that focus public and private efforts to improve reliability and resiliency of the Route for freight and passengers;

(iii) Obtaining public benefits as described in paragraph (d)(1)(vi) of this section; and

(iv) Identifying potential savings that could be realized by providing an alternative to existing supply chains through short sea transportation.

(2) [Reserved]

(d) *What information should Route Sponsors include in their designation requests?*

(1) One or more eligible Route Sponsors may submit Marine Highway Route designation requests to the Program Office. Designation requests should include the following information:

(i) *Physical Description of the Proposed Marine Highway Route.* Describe the proposed Marine Highway Route, and its connection to existing or planned transportation infrastructure

and intermodal facilities. Include key navigational factors such as available draft, channel width, bridge air draft, or lock clearance, and any foreseeable impacts on navigation or commerce. When available, include one or more maps of the proposed Route.

(ii) *Surface transportation regions served.* (A) Land transportation routes that would benefit. Provide a summary of any land transportation route that the Marine Highway Route would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(B) U.S. Domestic Shipping Lane Served. For Marine Highway Routes that pass through waters outside U.S. territorial waters, provide a summary of the shipping routes or trade lanes that the Marine Highway Route would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(iii) *Involved parties.* Provide the organizational structure of the Route Sponsors and supporters recommending the Route designation, including business affiliations and private sector stakeholders. Multi-jurisdictional coalitions may include State Departments of Transportation, metropolitan planning organizations, municipalities and other governmental entities (including tribal governments). Include the extent to which these entities have expressed support for the route designation and describe any affiliations with environmental groups or civic associations, or affiliations with any foreign interests.

(iv) *Volume and characteristics.* If authoritative data are available, provide the volume of passengers and/or cargo that are candidates for shifting to water transportation on the proposed Route. Otherwise provide estimates for this information, include identified shippers, manufacturers, distributors, and other entities that could benefit from a Marine Highway alternative, and the extent to which these entities have expressed support for the Marine Highway Route designation request.

(v) *Congestion reduction.* Describe the extent to which the proposed Route could relieve landside congestion in measurable terms, if applicable. Include any known offsetting land transportation infrastructure savings (either construction or maintenance)

that would likely result from the Route, if applicable.

(vi) *Public benefits.* Provide, if known, the net savings over status quo in emissions, including greenhouse gases, energy consumption, landside infrastructure maintenance costs, safety and system resiliency. Specify if the Marine Highway Route represents the most cost-effective option among other modal improvements. Include consideration of the implications future growth may have on the proposed Route.

(vii) *Public costs.* If applicable and known, identify any costs that may result from designation of the route. If able, provide costs that are quantifiable such as the additional cost of emissions or energy consumption required to effectively leverage the benefits of the designated route. These costs should be a component in the net savings identified in paragraph (d)(1)(vi) of this section.

(viii) *Impediments.* Describe known or anticipated obstacles to utilization of the proposed Marine Highway Route. Include any strategies, either in place or proposed, to deal with the impediments.

(2) [Reserved]

(e) *How will the Program Office evaluate and recommend Marine Highway Route designation requests?*

(1) The Program Office will evaluate and recommend Route Designations based on an analysis and technical review of the information provided by the Route Sponsor. The Maritime Administration will recommend Routes that receive a favorable technical review, and meet other criteria described in this part, for designation by the Secretary.

(2) The Program Office may consider additional factors and may request supplemental information during the review process. USDOT will notify Route Sponsors as to the status of their request in writing once the Secretary makes a determination.

§ 393.3 Marine Highway Projects.

(a) *What are the minimum eligibility requirements for MARAD to recommend a Marine Highway Project for the Secretary to designate?*

(1) MARAD may recommend only those Marine Highway Projects that will use U.S. documented vessels and mitigate landside congestion or promote short sea transportation.

(2) MARAD may recommend only those Marine Highway Projects that:

(i) Involve the carriage of cargo in Short Sea Transportation as defined in paragraph (k) of this section;

(ii) Involve new or expand existing services for the carriage of cargo; and

(iii) Are on a designated Marine Highway Route.

(3) Proposed Route Designations are accepted at any time, and may be submitted together with the proposed Project Designation.

(4) Successful Project Applicants must demonstrate a direct connection between a proposed Marine Highway Project and the carriage of cargo through ports on Designated Marine Highway Routes.

(b) *When does the Program Office accept Marine Highway Project designation applications?*

(1) The Administrator will announce by notice in the **Federal Register** and on MARAD's AMHP Web site open season periods to allow Project Applicants opportunities to submit Marine Highway Project designation applications.

(2) [Reserved]

(c) *What should Project Applicants include when preparing a Marine Highway Project designation application?*

(1) The market or customer base to be served by the service and the service's value proposition to customers. This includes—

(i) A description of how the market is currently served by transportation options;

(ii) Identities of shippers that have indicated an interest in, and level of commitment to, the proposed service;

(iii) Specific commodities, markets, and shippers the Project is expected to attract;

(iv) Extent to which interested entities have been educated about the Project and expressed support, and

(v) A marketing strategy for the project if one exists.

(2) *Operational framework.* A description of the proposed operational framework of the project including origin/destination pairs, transit times, vessel types, and service frequency.

(3) *The cost model for the proposed service.* The cost model should be broken down by container, trailer, or other freight unit, including loading and discharge costs, vessel operating costs, drayage costs, and other ancillary costs. Provide a comparison cost model outlining the current costs for transportation using landside mode (truck and rail) alternatives for the identified market that the proposed project will serve. Provide the project's financial plan and provide projected revenues and expenses. Include labor and operating costs, drayage, fixed and

recurring infrastructure and maintenance costs, vessel or equipment acquisition or construction costs, etc. Include any anticipated changes in local or regional short sea transportation, policy or regulations, ports, industry, or other developments affecting the project. In the event that public sector financial support is being sought, describe the amount, form and duration of public investment required. Applicants may email mh@dot.gov to request a sample cost model.

(4) An overall quantification of the net public benefits estimated to be gained through the successful initiation of the Marine Highway Project, including highway miles saved, road maintenance savings, air emissions savings, and safety and resiliency impacts.

(5) *Marine Highway Route(s).* Identify the designated Marine Highway Routes the Project will utilize.

(6) *Organization.* Provide the organizational structure of the proposed project, including an outline of the business affiliations, environmental, non-profit organizations and governmental or private sector stakeholders.

(7) *Partnerships:—(i) Private sector partners.* Identify private sector partners and describe their levels of commitment to the proposed service. Private sector partners can include terminals, vessel operators, shipyards, shippers, trucking companies, railroads, third-party logistics providers, shipping lines, labor, workforce and other entities deemed appropriate by the Secretary.

(ii) *Public sector partners.* Identify State Departments of Transportation, metropolitan planning organizations, municipalities and other governmental entities, including tribal entities, that Project Applicants have engaged and the extent to which they support the service. Include any affiliations with environmental groups or civic associations.

(iii) *Documentation.* Provide documents affirming commitment or support from entities involved in the project.

(8) *Public benefits.* These measures reflect current law and are consistent with USDOT's Strategic Goals. Project Applicants should organize external net cost savings and public benefits of the Project based on the following six categories:

(i) *Emissions benefits.* Address any net savings, in quantifiable terms, now and in the future, over current emissions practices, including greenhouse gas emissions, criteria air pollutants or other environmental benefits the project offers.

(ii) *Energy savings.* Provide an analysis of potential net reductions in energy consumption, in quantifiable terms, now and in the future, over the current practice.

(iii) *Landside transportation infrastructure maintenance savings.* To the extent the data is available indicate, in dollars per year, the projected net savings of public funds that would result in road or railroad maintenance or repair, including pavement, bridges, tunnels or related transportation infrastructure from a proposed project. Include the impacts of accelerated infrastructure deterioration caused by vehicles currently using the route, especially in cases of oversize or overweight vehicles. This information applies only to projects for a marine highway service where a landside alternative exists.

(iv) *Economic competitiveness.* To the extent the data is available, describe how the project will measurably result in transportation efficiency gains for the U.S. public. For purposes of aligning a project with this outcome, applicants should provide evidence of how improvements in transportation outcomes (such as time savings, operating cost savings, and increased utilization of assets) translate into long-term economic productivity benefits.

(v) *Safety improvements.* Describe, in measurable terms, the projected safety improvements that would result from the proposed operation.

(vi) *System resiliency and redundancy.* To the extent data is available, describe, if applicable, how a proposed Marine Highway Project offers a resilient route or service that can benefit the public. Where land transportation routes serving a locale or region are limited, describe how a proposed project offers an alternative and the benefit this could offer when other routes are interrupted as a result of natural or man-made incidents.

(9) *Proposed project timeline.* Include a proposed project timeline with estimated start dates and key milestones. If applicable, include the point in the timeline at which the enterprise is anticipated to attain self-sufficiency.

(10) *Support and investment required.* Describe any known or anticipated obstacles to either implementation or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments. Identify specific infrastructure gaps such as docks, cranes, ramps, etc. that will need to be addressed in order for the project to become economically viable. Include estimates for the

required investments needed to address the infrastructure gaps.

(11) *Environmental considerations.* Project Applicants must provide all information necessary to assist MARAD's environmental analysis of the proposed project, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and other environmental requirements.

(d) *How will the Program Office evaluate and recommend Marine Highway Project applications for designation?*

(1) The Program Office will evaluate and recommend for designation by the Secretary those Projects based on an analysis and technical review of the information provided by the Project Applicant. MARAD will recommend Projects that operate on a designated Marine Highway Route, receive a favorable technical review, and meet other criteria described in this part, for designation by the Secretary.

(2) The Program Office may consider additional factors and may request supplemental information during the review process. USDOT will notify Project Applicants as to the status of their application in writing once the Secretary makes a determination.

(e) *How will MARAD support designated America's Marine Highway Projects?*

(1) Upon designation as a Marine Highway Project, the Department Program Office will coordinate with the Project Applicants to identify the most appropriate departmental actions to support the project. USDOT support could include any of the following, as appropriate and subject to agency resources:

(i) Promote the service with appropriate governmental, regional, State, local or tribal government transportation planners, private sector entities or other decision makers to the extent permitted by law.

(ii) Coordinate with ports, State Departments of Transportation, metropolitan planning organizations, localities, other public agencies and the private sector to support the designated service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local or Tribal governmental entities to remove barriers to success.

(iii) Pursue commitments from Federal entities to transport Federally owned or generated cargo using the services of the designated project, when practical or available.

(iv) In cases where transportation infrastructure is needed, Project Applicants may request to be included on the Secretary's list of high-priority transportation infrastructure projects under E.O. 13274, "Environmental Stewardship and Transportation Infrastructure Project Review."

(v) Assist with developing individual performance measures for Marine Highway Projects.

(vi) Work with Federal entities and regional, State, local and tribal governments to include designated Projects in transportation planning.

(vii) Coordinate with public and private entities to resolve impediments to the success of Marine Highway Projects.

(viii) Conduct research on issues specific to Marine Highway Projects.

(ix) Advise Project Applicants on the availability of various Federal funding mechanisms to support the Projects.

(x) Maintain liaison with Project Applicants and representatives of designated Projects to provide ongoing support and identify lessons learned and best practices for other projects and the overall Marine Highway program.

(2) [Reserved]

(f) *How will the Department protect confidential information?*

(1) If your application, including attachments, includes information that you consider to be a trade secret or confidential commercial or financial information, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), as implemented by the Department at 49 CFR part 7, you may assert a claim of confidentiality.

(2) *What should I do if I believe my Project designation application contains confidential or business sensitive information?*

(i) Note on the front cover that the submission "Contains Confidential Business Information (CBI);"

(ii) Mark each affected page "CBI;" and

(iii) Clearly highlight or otherwise denote the CBI portions. The USDOT protects such information from disclosure to the extent allowed under applicable law.

(3) *What will happen if information related to my Project designation application is the subject of a request under the Freedom of Information Act (FOIA)?* We will apply the procedures contained in 49 CFR part 7 to a request from non-Federal third-parties for information related to documents you submit under this part. We will consider your claim of confidentiality at the time someone requests the information under

FOIA. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(g) Is there a specific format required for project designation applications and attached documents?

(1) When responding to specific solicitations for Marine Highway Projects by the Program Office, Project Applicants should include all of the information requested by paragraph (c) of this section organized in a manner consistent with the elements set forth in that section. The Program Office reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. The narrative portion of an application should not exceed 20 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided in the form of appendices, but limited to relevant information. Applications may be submitted electronically via [regulations.gov](http://www.regulations.gov) (<http://www.regulations.gov>). Applications submitted in writing must include the original and three copies and must be on 8.5" x 11" single spaced paper, excluding maps, Geographic Information Systems (GIS) representations, etc.

(2) In the event that the Project Applicant of a Marine Highway Project that has already been designated by the Secretary seeks a modification to the designation because of a change in project scope, an expansion of the project, or other significant change to the project, the Project Applicant should request the change in writing to the Secretary via the Maritime Administrator. The request must contain any changed or new information that is relevant to the project.

(h) What does the Program Office do to ensure designated projects are developing properly?

(1) Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), the Program Office will evaluate them regularly to determine if the project is likely to achieve its objectives.

(2) Overall project performance will be assessed according to three categories—exceeds, meets, or does not meet original projections—in each of the three areas defined below:

(i) *Public benefit.* Does the Project meet the stated goals in shifting specific numbers of vehicles (number of trucks, rail cars or automobiles) off the

designated landside routes? The Program Office will assume other public benefits, including energy savings, reduced emissions, and safety improvements to be a direct derivative of either numbers of vehicles reduced, or vehicle/ton miles avoided, unless specific factors change (such as a change in vessel fuel or emissions).

(ii) *Public cost.* Is the overall cost to the Federal Government (if any) on track with estimates at the time of designation? The overall cost to the Federal Government represents the amount of Federal investment (*i.e.*, direct funding, loan guarantees or similar mechanisms) reduced by the offsetting savings the project represents (road/bridge wear and tear avoided, infrastructure construction or expansion deferred).

(iii) *Timeliness factor.* Is the project on track for the point at which the enterprise is projected to attain self-sufficiency? For example, if the project was anticipated to attain self-sufficiency after 36 months of operation, is it on track at the point of evaluation to meet that objective? This can be determined by assessing revenues, cargo and passenger trends, expenses and other factors established in the application review process.

(i) Can a Project designation expire or be terminated?

(1) Project Designations are effective for a period of five years, or until the date the project is completed, or MARAD cancels the designation. Project Designation will expire after three years of inactivity.

(2) Project Applicants wishing to extend a Project Designation must submit an updated application no later than six months before the five-year designation period ends. Project Applicants who no longer wish to maintain project designation may submit a request to the Secretary to revoke their designation.

Subpart C—Department of Transportation Efforts To Foster and Support America's Marine Highways

§ 393.4 DOT Support for planning activities.

(a) How does DOT provide support?

(1) The Program Office engages in coordination and planning activities with Federal, State, local and tribal governments and planning and private entities organizations to encourage the use of designated Marine Highway Routes and Projects. These activities include:

(i) Working with these entities to assess plans and develop strategies,

where appropriate, to incorporate Marine Highway transportation and other short sea transportation solutions to their statewide and metropolitan transportation plans, including the Statewide Transportation Improvement Programs and State Freight Plans.

(ii) Facilitating groups of States and multi-State transportation entities to determine how Marine Highway transportation can address port congestion, traffic delays, bottlenecks, and other interstate transportation challenges to their mutual benefit.

(iii) Identifying other Federal agencies that have jurisdiction over services, or which currently provide funding for components of services, in order to determine which agencies should be consulted and assist in the coordination process.

(iv) Organizing the Department's modal administrations, including Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Saint Lawrence Seaway Development Corporation, and Federal Transit Administration, as appropriate, for support and to evaluate costs and benefits of proposed Marine Highway Routes and Projects.

(2) [Reserved]

(b) [Reserved]

§ 393.5 DOT Support for Marine Highway-related research.

(a) How does DOT support research?

(1) The Program Office works in consultation with public and private entities as appropriate, within the limits of available resources, to identify impediments, develop incentives, and conduct innovative research, in support of the America's Marine Highway Program or in direct support of specific designated Marine Highway Routes and Projects. The primary objectives of selected research projects are to:

(i) Identify markets, cargoes, and service parameters that could facilitate the development of new or expanded Marine Highway Services.

(ii) Identify existing or emerging technology, vessel design, infrastructure designs, and other improvements that would reduce emissions, increase fuel economy, and lower costs of Marine Highway transportation and increase the efficiency of intermodal transfers.

(iii) Identify impediments to the establishment of Marine Highway services.

(iv) Identify incentives to increase the use and efficiency of Marine Highway services.

(b) The Secretary, in consultation with the Administrator of the

Environmental Protection Agency, may conduct research on short sea transportation regarding:

(1) The environmental and transportation benefits to be derived from short sea transportation alternatives for other forms of transportation;

(2) Technology, vessel design, and other improvements that would reduce emissions, increase fuel economy, and lower costs of short sea transportation and increase the efficiency of intermodal transfers; and

(3) Solutions to impediments to short sea transportation projects designated.

§ 393.6 America's Marine Highway Program Project grants.

(a) How does MARAD administer the AMHP grant program?

(1) The Associate Administrator for Intermodal Systems Development manages the program under the guidance and the immediate administrative direction of the Maritime Administrator.

(2) MARAD establishes grant program priorities as reflected in its grant opportunity announcements and, from time-to-time, issues clarifying guidance documents through the MARAD Web site and the **Federal Register**.

(3) The Administrator makes funding recommendations to the Secretary, who has the authority to award grants.

(b) How does MARAD make grant opportunities known?

(1) MARAD determines which grant opportunities it will offer, and establishes application deadlines and programmatic requirements when grant funds become available to the AMHP.

(2) The MARAD staff prepares Notice of Funding Opportunity (NOFO) announcements consisting of all information necessary to apply for each grant and publishes the announcement in the **Federal Register** and on grants.gov.

(c) How may an applicant apply for an AMHP grant?

(1) Applicants may apply for a grant using grants.gov or, in connection with a **Federal Register** announcement, by submitting the necessary information to the AMHP Office in electronic form.

(2) [Reserved]

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2017-25897 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-81-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-281; FCC 17-132]

Calling Number Identification Service—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its Caller Identification (Caller ID) privacy rules to allow law enforcement and security personnel, as directed by law enforcement, to obtain quick access to blocked Caller ID information needed to identify and thwart threatening callers. The Commission exempts threatening calls from blocked numbers from its caller privacy rules. Studies and reports show a disturbing increase in threatening calls in recent years. Many threatening calls come from blocked numbers. It directs carriers that upon report of such a threatening call by law enforcement on behalf of the threatened party, the carrier will provide any CPN of the calling party to law enforcement and, as directed by law enforcement, to security personnel for the called party for the purpose of identifying the party responsible for the threatening call. The Commission also amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

DATES: Effective January 2, 2018, except for 47 CFR 64.1601(d)(4)(ii) and (f), which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), shall become effective 30 days after the Commission's publication of a document in the **Federal Register**, which will announce approval by OMB under the PRA.

FOR FURTHER INFORMATION CONTACT:

Nellie A. Foosaner, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418-2925, email: Nellie.Foosaner@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 17-132, CC Docket No. 91-281, adopted on October 24, 2017, and released on October 25, 2017. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th

Street SW., Room CY-A257, Washington, DC 20554. The full text of this document and any subsequently filed documents in this matter may also be found by searching ECFS at: <http://apps.fcc.gov/ecfs/> (insert CC Docket No. 91-281 into the Proceeding block).

Congressional Review Act

The Commission sent a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in Report and Order as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might "further reduce the information burden for small business concerns with fewer than 25 employees."

Synopsis

1. In Report and Order, the Commission helps security and law enforcement personnel obtain quick access to blocked Caller ID information needed to identify and thwart threatening callers. It also amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

2. The number of threatening phone calls has increased dramatically in recent years. These calls traumatize communities and result in substantial disruption to schools, religious organizations, and other entities. They also drain public resources by requiring the deployment of police and bomb units. Schools and others receiving threats have suggested that blocked Caller ID information hinders a rapid response. The Commission's action moves away from case-by-case waivers to a streamlined approach that will help protect the safety of threatened parties in a timely way.

Caller ID Exemption for Threatening Calls

3. *The Need for an Exemption.* The Commission Modifies its Caller ID rules

to exempt threatening calls from the Calling Party Number (CPN) privacy rules so that security personnel and law enforcement have quick access to information they need to aid their investigations. The Commission agrees with the vast majority of commenters that the exemption promotes public safety.

4. This new exemption is consistent with the Commission's prior approach in this area. The Commission has previously concluded, for example, that to the extent Caller ID services are used to deliver emergency services, privacy requirements should not apply to delivery of CPN to a public agency's emergency lines, a poison control line, or in conjunction with 911 emergency services. In these instances, the Commission concluded that Caller ID blocking mechanisms could jeopardize emergency services and therefore pose a serious threat to safety. The Commission believes that threatening calls present equally compelling circumstances in which the need to ensure public safety, in accordance with the Commission's fundamental statutory mission, outweighs any CPN privacy interest of the threatening caller.

5. The Commission disagrees with the sole commenter who urges it to not adopt an exemption but instead continue to issue case-by-case waivers, albeit on a streamlined basis. The waiver process, even if streamlined, would not provide equivalent benefits in combatting threatening calls. Investigation of these cases can depend on immediate action to stop a potentially catastrophic event. An exemption would allow for virtually immediate access to blocked Caller ID information upon proper request in threatening situations. The Commission thus agrees with the commenters who point out that threatening calls should be addressed immediately through an exemption in the Commission's rules rather than a case-by-case waiver process.

6. The Commission also disagrees with commenters who urge that carriers should have discretion to decline law enforcement requests to get Caller ID information. CTIA—The Wireless Association claims that a mandate is not necessary, noting both the industry's long and successful track record of cooperation with law enforcement and that the Electronic Communications Privacy Act (ECPA) utilizes a voluntary disclosure provision. While the Commission believes that the industry's record may indeed be laudatory, the Commission concludes that mandatory disclosure is essential to its exemption. The Commission declines to define a

"valid request" from law enforcement, as suggested by CenturyLink, because CTIA states carriers have an excellent track record of complying with law enforcement requests under ECPA. The Commission declines at this time to create a new law enforcement request process because the record reveals no evidence that law enforcement requests for this information have been ineffective or unreliable in the past. The record reveals no scenarios where a request for Caller ID by law enforcement, as the Commission describes below, should give carriers reason to question the validity of the emergency. Further, the imminent and grave nature of threatening calls, as defined below, leave little time for the exercise of discretion in *whether* to disclose information after law enforcement has become involved. As discussed below, the Commission adopts the ECPA standard for disclosure of information. The Commission does not find that standard to be inconsistent with a mandatory disclosure requirement. Carriers that are required to make disclosures in the very specific, narrowly defined scenario covered by the Commission's new exemption will not violate the more flexible ECPA standard by complying with the Commission's requirement. Moreover, the Commission believes that a law enforcement request based on the possibility of death or serious injury can satisfy ECPA's "good faith" standard to justify a carrier's voluntary disclosure of such information.

7. The Commission agrees with AT&T that carriers should not be subject to liability for violation of its Caller ID privacy rules if they disclose blocked Caller ID pursuant to the new exemption. As CTIA notes, "[l]aw enforcement has the experience and the thousands of officers in communities throughout the country who are already positioned to evaluate whether a threat is genuine." Law enforcement's determination of a threatening call coupled with the mandatory nature of the disclosure removes any justification for placing liability on carriers who comply with a proper request for blocked Caller ID. CTIA suggests that the Commission adopts a provision in its rule § 64.1601(b)'s stating that prohibition on overriding a privacy indicator does not apply when "CPN delivery . . . (iv) Is provided in connection with any lawful request by a law enforcement agency for assistance in an emergency." Such a provision is unnecessary in light of the Commission's existing rule, § 64.1601(d)(4)(iii), exempting "legally

authorized call tracing or trapping procedures specifically requested by a law enforcement agency." To the extent that AT&T and NTCA—The Rural Broadband Association ask the Commission to somehow exempt carriers from any other legal liability, the Commission declines to do so. The Commission's concern is only with ensuring that its rules do not interfere with the ability of carriers to respond to law enforcement requests as allowed under law.

8. *Definition of "Threatening Call."* The Commission defines the term "threatening call," which triggers the application of the new exemption, as "any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency." Typically, a call from a person simply reporting a threat, where the facts of the call indicate that the caller wishes to remain anonymous, would not be subject to disclosure because disclosure would not be necessary to prevent death or serious bodily injury. In the event disclosure is necessary to prevent death or serious bodily injury, however, the rule would allow disclosure only to law enforcement. The Commission thinks this is appropriate and permitted by ECPA's emergency exception. The Commission does not wish to deter anonymous tips made to law enforcement. This definition ensures consistency with the emergency-disclosure provision of ECPA, as urged by several commenters, and because it satisfies the Commission's goal of targeting the most threatening calls. NCTA states that the Commission "should define a threatening call under § 64.1600 of its rules as 'any call that includes a threat involving danger of death or serious physical injury to any person.'" The Commission declines to use NCTA's definition because referring to "emergency" rather than to "threat" encompasses more situations where immediate disclosure is necessary to address an emergency. Additionally, its proposed definition is consistent with ECPA. Finally, the Commission includes "disclosure without delay" within the definition to further align its disclosure requirement under circumstances where ECPA allows it.

9. Because carriers are already familiar with the ECPA standard and ECPA covers the imminent nature of the dangers envisioned by the *Caller ID NPRM*, published at 82 FR 33856, July 21, 2017, and commenters, the Commission tailors its rule to align with the ECPA definition for purposes of this new exemption. The Commission agrees

that it makes sense to align its definition of a threatening call with existing federal law to ensure that carriers have consistent legal standards to apply in situations where both the Commission's rules and ECPA apply. The Commission also agrees with commenters that the ECPA definition would sufficiently cover the types of calls it seeks to exempt from the Caller ID blocking rule, without being either over- or under-inclusive, or including terms that could be ambiguous.

10. Law Enforcement Involvement.

The Commission finds that, to ensure the exemption is not abused, a request for blocked Caller ID information associated with a threatening call must be made by law enforcement on behalf of the threatened party. The Commission believes that this requirement will, among other things, ensure that such requests concern a *bona fide* threatening call and will not be a pretext for obtaining blocked Caller ID for other purposes. As CTIA commented, such a requirement will ensure there is no ambiguity regarding the necessary level of law enforcement involvement.

11. The Commission agrees with commenters that law enforcement involvement at this stage of the process is essential to avoid having carriers make a determination on what constitutes a threatening call. AT&T avers that the involvement of law enforcement would help ensure compliance with the ECPA disclosure requirements, and would help prevent overbroad disclosures of blocked caller ID information that may harm the privacy of non-threatening callers. According to AT&T, law enforcement officials are "indisputably better qualified to validate the existence of emergency circumstances than carrier personnel," and are likely more familiar with the facts giving rise to a requested disclosure. CTIA adds that requiring law enforcement involvement when restricted Caller ID information is requested would deter parties from manipulating the unblocking process. The Commission agrees with commenters that law enforcement personnel are in the best position to determine the existence of a credible threat that necessitates revealing CPN to investigate the threatening call.

12. Likewise, the Commission finds that only law enforcement personnel and, as directed by law enforcement, others directly responsible for the safety and security of the threatened party should receive the otherwise protected Caller ID information in the case of threatening calls. Security personnel may only receive the blocked Caller ID

information from the providers as directed by law enforcement because law enforcement will generally be in a better position than providers to determine who qualifies as security personnel. The Commission limits the disclosure of the blocked Caller ID information to prevent abuse, and to protect the privacy interests of parties who may block their Caller ID for valid privacy interests, such as domestic violence victims. By limiting the disclosure to law enforcement or, as directed by law enforcement, to security personnel for purposes of investigating a threat, the Commission seeks to prevent exploitations of the amended rule, such as an abuser tracking down a victim. The Commission defines security personnel as "those individuals directly responsible for maintaining safety of the threatened entity consistent with the nature of the threat." For example, employees whose duties include security at an institution would qualify as security personnel; by contrast, an employee who merely answered the threatening phone or an individual homeowner would not. Security personnel may include, but are not limited to, corporate and government agency security personnel, and school or university security staff acting within the scope of their duties. In the case of an individual homeowner, law enforcement can take reasonable action to protect the homeowner as it conducts its investigation of a threatening call. The Commission allows disclosure to security personnel as directed by law enforcement to encompass situations where security personnel need access to the blocked Caller ID information for investigative purposes, as in instances when a large institution with its own security force, like a university or government agency, receives a threat.

13. The Commission agrees with CTIA's recommendation that "called parties should not be the recipients of information," and the "use of disclosed CPN should be restricted—by rule—in a manner consistent with prior waivers." In its reply comments, NTCA asserts that, in times of exigency or in remote or insular areas, Caller ID information should be available to volunteer rescuers and similar non-law enforcement personnel with a safe harbor provision for carriers. The rules the Commission adopts here make Caller ID information available to "security personnel," as directed by law enforcement, as well as law enforcement, and the Commission's definition of "security personnel" does not necessarily exclude the types of

situations NTCA describes. The determination NTCA urges would be dependent on the facts of a specific situation, and is, therefore, not appropriate for the general exemption the Commission adopts here. Accordingly, the Commission includes the following conditions in its rule for law enforcement or, as directed by law enforcement, security personnel of the called party investigating the threat: (1) The CPN on incoming restricted calls may not be passed on to the line called; (2) any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and security personnel, as directed by law enforcement; (3) telecommunications and security personnel, as directed by law enforcement, may access restricted CPN data only when investigating calls involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency, and shall document that access as part of the investigative report; (4) carriers transmitting restricted CPN information must take reasonable measures to ensure the security of such communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; and, (6) any violation of these conditions must be reported promptly to the Commission. The Commission expects that these boundaries on how the disclosed Caller ID information must be treated will advance public safety efforts while protecting valid privacy interests. The Commission has imposed these conditions on waivers both to ensure that the Caller ID information in question is accessible only to persons with direct involvement in investigating the threatening calls and to ensure that the information is used only for that purpose. The Commission has no indication that these conditions did not properly protect privacy interests in the cases underlying the waivers, and the record does not reveal any reason to doubt their efficacy more generally.

14. *Carrier Obligations Under Section 222 of the Act.* The Commission finds that the disclosure required by the new exemption the Commission adopts here is consistent with section 222 of the Act. Section 222(a) of the Act states that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided

by a telecommunications carrier.” The Commission’s amended rule requiring carriers to disclose blocked Caller ID information when law enforcement requests it to investigate threatening calls does not contravene carriers’ obligations under section 222 of the Act.

15. In addressing the threatening calls recently received by Jewish Community Centers, the Bureau discussed section 222 of the Act in connection with the statutory protection of customer proprietary network information. The Commission agrees with the Bureau’s view that section 222(d) of the Act allows for carriers to disclose blocked Caller ID in the case of unlawful activity because section 222(d) of the Act states, “[n]othing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents . . . to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.” As described above, the Commission defines a “threatening call” as “any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency.” By limiting the disclosure of blocked Caller ID to narrowly defined cases of threatening calls that raise the “danger of death or serious physical injury to any person,” the Commission ensures that carriers are within their obligations under section 222 of the Act.

The Jewish Community Centers’ Temporary Waiver

16. On February 28, 2017, Senator Charles E. Schumer submitted a letter to the Commission expressing concern regarding recent bomb threats made via phone against various Jewish Community Centers (JCCs) in New York and across the nation. Senator Schumer noted that the Commission has played a valuable role in ensuring law enforcement and others are not hindered in their access to the caller information of threatening calls and suggested consideration of the grant of a waiver. On March 3, 2017, CGB granted to JCCs, and any carriers that serve JCCs, a temporary, emergency waiver of § 64.1601(b) of the Commission’s rules. In so doing, CGB indicated that this temporary waiver would remain in effect until the Commission determined whether the waiver should be made permanent. In addition, CGB sought comment on whether to make this waiver permanent.

Comments filed in response support the waiver and note the public interest in promoting efforts to identify and thwart individuals making threatening calls to JCCs. No commenter opposed the waiver.

17. In the *Caller ID NPRM*, the Commission confirmed that good cause continued to exist to maintain the temporary waiver of § 64.1601(b) of the Commission’s rules granted to JCCs and the carriers who serve them for disclosure of CPN associated with threatening calls. The *Caller ID NPRM* stated that in the event the Commission were to amend its rules to recognize a more general exemption for threatening calls, the JCC waiver would be encompassed within the protections afforded by that exemption. In Report and Order, the Commission recognizes an exemption for threatening calls thereby encompassing the JCC waiver. Accordingly, the JCC waiver is no longer necessary, and is superseded by document FCC 17–32 and terminated as of the effective date of the rule changes adopted herein.

Exemption for Non-Public Entities Providing Emergency Services

18. The Commission also amends its rules to allow non-public emergency services to receive the CPN of all incoming calls from blocked numbers requesting assistance. The Commission believes amending its rules to allow non-public emergency services access to blocked Caller ID promotes the public interest by ensuring timely provision of emergency services without undermining any countervailing privacy interests.

19. The Commission previously concluded that “[t]o the extent that CPN-based services are used to deliver emergency services, the Commission finds that privacy requirements for CPN-based services should not apply to delivery of the CPN to a public agency’s emergency line, a poison control line, or in conjunction with 911 emergency services” and has noted that “in an emergency, a caller is not likely to remember to dial or even know to dial an unblocking code.” Here the Commission takes its previous conclusions a logical step further by amending the rules to allow non-public emergency services to retrieve from carriers the blocked Caller ID of callers seeking assistance. The Commission believes these callers would want an emergency service, whether a public agency or non-public entity, to be able to quickly and easily contact or locate them using their phone number to provide assistance.

20. The Bureau previously waived the Caller ID privacy rule for a private ambulance service, *Chevrah Hatzalah Volunteer Ambulance Corps Inc.* (Hatzalah). In granting the waiver, the Bureau noted that Hatzalah’s automatic dial retrieval system “. . . is disrupted when the incoming call comes from a caller who has requested that his/her number not be revealed to the called party. In this circumstance, Hatzalah states that the inability to automatically identify callers creates several problems that can delay or even prevent the timely provision of emergency care.” In its petition, Hatzalah further argued that allowing it to access blocked Caller ID information “would not frustrate [the] purpose [of the Commission’s rule] because the Commission has recognized that a caller’s privacy interest should not interfere with the delivery of emergency services.”

21. The Bureau found that the waiver served the public interest “because Hatzalah will be better able to respond to emergency situations by saving the crucial time taken when requesting phone number and location information from the caller.” The Bureau also noted, “. . . people seeking emergency services are often under great stress when they call, which can lead to difficulty in accurately communicating the vital telephone number and location information.” Finally, the Bureau agreed with Hatzalah “that a caller seeking emergency services has an interest in the number becoming known to the emergency provider to speed the provision of emergency services and, therefore, any privacy concerns are minimized in this context.”

22. In the *Caller ID NPRM*, the Commission sought comment on whether it should extend the proposed exemption to non-public entities that provide emergency services such as private ambulance companies. Hatzalah urges us to amend its rules for the same reasons the Bureau granted it a waiver so that other non-public emergency services will also have access to blocked Caller ID to provide the requested assistance. The Commission agrees that the *Hatzalah Order’s* reasoning should apply more generally and find that allowing non-public emergency services to access blocked Caller ID promotes public safety and does not undermine any countervailing privacy interests associated with revealing CPN. *Petition of Chevrah Hatzalah Volunteer Ambulance Corps Inc. for Waiver of Section 1601(b) of the Commission’s Rules—Blocked Telephone Numbers*, CC Docket No. 91–281, Order, 28 FCC Rcd 1253 (CGB 2013) (order was not published in the **Federal Register**). In

order to facilitate the public safety goals of non-public emergency services, the Commission amends its Caller ID privacy rules to allow such services to obtain blocked Caller ID from carriers.

23. Consistent with the *Hatzalah Order*, entities providing emergency services must be licensed by a state or municipality to provide such services to qualify for this exemption. Unlike the threatened callers discussed above, non-public emergency services do not have to act in conjunction with law enforcement to obtain blocked Caller ID information from carriers. Involving public emergency services in this scenario would undermine the goal of allowing providers of emergency services to provide quick and effective assistance to individuals seeking such assistance.

Final Regulatory Flexibility Act Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Caller ID NPRM*. The Commission sought written comment on the proposals in the *Caller ID NPRM*, including comment on the IRFA. No comments were received on the IRFA.

Need for, and Objectives of, the Order

25. The Report and Order takes an important step to help security and law enforcement personnel responsible for the safety of parties receiving certain threatening calls obtain quick access to the Caller ID information needed to identify and thwart threatening callers. The Report and Order moves away from case-by-case waivers to the streamlined approach necessary to help protect the safety of threatened parties in a timely way. Specifically, Report and Order clears the way for carriers to disclose blocked Caller ID information associated with threatening calls to facilitate the investigation of such threats and amends the Commission's rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

26. *Caller ID Exemption for Threatening Calls*. The Report and Order modifies the Commission's Caller ID rules to exempt threatening calls from the CPN privacy rules, so that security personnel and associated law enforcement have quick access to information they need to aid their investigations. The Report and Order defines the term "threatening call," which triggers the application of the new exemption, as "any call that conveys an emergency involving danger of death or serious physical injury to

any person requiring disclosure without delay of information relating to the emergency." This definition is consistent with the emergency-disclosure provision of ECPA, and it satisfies the Commission's goal of targeting the most threatening calls.

27. *Law Enforcement Involvement*. To ensure the exemption is not abused, a request for blocked Caller ID associated with a threatening call must be made by law enforcement on behalf of the threatened party. The Commission believes that this requirement will, among other things, ensure that such requests concern a bona fide threatening call and will not be a pretext for obtaining blocked Caller ID for other purposes.

28. *Only Law Enforcement and Security Personnel Receive Blocked Caller ID*. Only law enforcement personnel and others responsible for the safety and, as directed by law enforcement, security personnel of the threatened party should receive the otherwise protected Caller ID information in the case of threatening calls. The Report and Order limits the disclosure of the blocked Caller ID information to prevent abuse of the disclosure process, and to protect the privacy interests of parties who may block their Caller ID for valid privacy interests, such as domestic violence victims. The Report and Order defines security personnel as "those individuals directly responsible for maintaining safety of the threatened entity consistent with the nature of the threat."

29. *Conditions on Receipt of Blocked Caller ID Information*. The Report and Order includes the following conditions in the Commission's rule for law enforcement or security personnel of the called party investigating the threat: (1) The CPN on incoming restricted calls may not be passed on to the line called; (2) any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and, as directed by law enforcement, security personnel; (3) telecommunications and, as directed by law enforcement, security personnel may access restricted CPN data only when investigating calls involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency, and shall document that access as part of the investigative report; (4) carriers transmitting restricted CPN information must take reasonable measures to ensure the security of such communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; and (6) any violation

of these conditions must be reported promptly to the Commission.

30. *Carrier Obligations Under Section 222 of the Act*. The disclosure required by the new exemption adopted in the Report and Order is consistent with section 222 of the Act. Section 222(a) of the Act states that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunications carriers reselling telecommunications services provided by a telecommunications carrier." The Commission's amended rule requiring carriers to disclose blocked Caller ID information when law enforcement requests it does not contravene carriers' obligations under section 222 of the Act.

31. *Jewish Community Center Temporary Waiver*. The Report and Order recognizes an exemption for threatening calls thereby encompassing the JCC waiver. Accordingly, the JCC waiver is no longer necessary, and is superseded by the Report and Order.

32. *Non-Public Emergency Services*. The Report and Order also amends the Commission's rules to allow non-public emergency services to receive the CPN of all incoming calls from blocked numbers requesting assistance. Amending the Commission's rules to allow non-public emergency services access to blocked Caller ID promotes the public interest by ensuring timely provision of emergency services without undermining any countervailing privacy interests.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

33. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

34. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as

the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration. Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.

Wireline Carriers

35. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

36. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for local exchange services. The closest applicable size standard under SBA rules is for the category wired telecommunications carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of

technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of local exchange service are small businesses.

37. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category wired telecommunications carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

38. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has

developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category wired telecommunications carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities.

39. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

40. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services (IXCs). The appropriate size standard under SBA rules is for the category wired

telecommunications carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies.

Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that the majority of IXC’s are small entities.

41. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to other toll carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for wired telecommunications carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” Under that size standard, such a

business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of other toll carriers can be considered small.

Wireless Carriers

42. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of wireless telecommunications carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, the Commission estimates that the majority of wireless telecommunications carriers can be considered small.

43. *Satellite Telecommunications Providers.* The category of satellite telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” This category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of under \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications firms are small entities.

44. *All Other Telecommunications.* All other telecommunications comprise, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as

satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” The SBA has developed a small business size standard for the category of All Other Telecommunications. Under that size standard, such a business is small if it has \$32.5 million in annual receipts. For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year. Of this total, 1,400 had annual receipts below \$25 million per year. Consequently, the Commission estimates that the majority of all other telecommunications firms are small entities.

Resellers

45. *Toll Resellers.* The Commission has not developed a definition for toll resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission

estimates that the majority of toll resellers are small entities.

46. *Local Resellers.* The SBA has developed a small business size standard for the category of telecommunications resellers. The telecommunications resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

47. *Prepaid Calling Card Providers.* The SBA has developed a small business size standard for the category of telecommunications resellers. The telecommunications resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

48. The Report and Order creates an exemption for threatening calls and calls to non-public emergency services from the Commission's Caller ID privacy rules. These changes affect small and large companies equally, and apply

equally to all classes of regulated entities identified above.

49. *Reporting and Recordkeeping Requirements.* There are no new reporting requirements. The Report and Order amends the caller privacy rules to exempt threatening calls from the CPN privacy rules, so that associated law enforcement and, as directed by law enforcement, security personnel have quick access to information they need to aid their investigations. Voice service providers do not need to change their current recordkeeping as they have been able to provide CPN when requested in the past.

50. *The Report and Order adds a recordkeeping requirement.* The Commission amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance. Voice service providers will need to keep a record of when they provide blocked Caller ID associated with calls requesting assistance to non-public emergency services providers.

51. *Other Compliance Requirements.* Voice service providers will be required to release blocked Caller ID information when it is requested by law enforcement in conjunction with circumstances amounting to a threatening call and when a non-public emergency service requests blocked Caller ID. To do so, voice service providers must comply with law enforcement requests for CPN as they currently do under ECPA. The Commission anticipates the impact will be small because of the statutory requirements already in place.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

53. The Commission considered feedback from the *Caller ID NPRM* in crafting the final order. The Commission evaluated the comments in light of the goal of removing regulatory roadblocks to help security and law enforcement

personnel responsible for the safety of parties receiving certain threatening calls obtain quick access to the Caller ID information needed to identify and thwart threatening callers. While a commenter suggested permissive rules, the Commission implemented mandatory rules in light of public safety concerns. The Commission adopts an exemption instead of simply streamlining the waiver process to allow for virtually immediate access to blocked Caller ID information upon proper request in threatening situations. The Commission considered continuing the waiver process, but inherent delays in the waiver process do not meet the goal of streamlining access to information needed to investigate threatening calls. In addition, the Commission reduced uncertainty, burdens and costs on small business providers that seek to relay the blocked Caller ID information, by putting the identification of "security personnel" in the hands of law enforcement as opposed to providers.

54. The Commission does not see a need to establish a special timetable for small entities to reach compliance with the modification to the rules. No small business has asked for a delay in implementing the rules. In considering the burden on small business, the Commission notes that they already have responsibilities under ECPA, and the Commission aligns its threatening call definition with that of ECPA. Similarly, there are no design standards or performance standards to consider in this rulemaking.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Rules

55. None.

Ordering Clauses

56. Pursuant to the authority contained in sections 1–4, 201 and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 222, This Report and Order IS ADOPTED and that part 64 of the Commission's rules, 47 CFR 64.1600, 64.1601, are amended.

57. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, sent a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 225, 254(k), 403(b)(2)(B), (c), 715, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.1600 by adding paragraph (l) to read as follows:

§ 64.1600 Definitions.

* * * * *

(l) *Threatening Call.* The term “threatening call” is any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency.

■ 3. Amend § 64.1601 by revising paragraph (d)(4)(ii) and by adding paragraphs (f) and (g) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(d) * * *

(4) * * *

(ii) Is used on a public agency’s emergency telephone line or in conjunction with 911 emergency services, on a telephone line to contact non-public emergency services licensed by the state or municipality, or on any entity’s emergency assistance poison control telephone line; or

* * * * *

(f) Paragraph (b) of this section shall not apply when CPN delivery is made in connection with a threatening call. Upon report of such a threatening call by law enforcement on behalf of the threatened party, the carrier will provide any CPN of the calling party to law enforcement and, as directed by law enforcement, to security personnel for the called party for the purpose of identifying the party responsible for the threatening call.

(g) For law enforcement or security personnel of the called party investigating the threat:

(1) The CPN on incoming restricted calls may not be passed on to the line called;

(2) Any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and security personnel, as directed by law enforcement;

(3) Telecommunications and security personnel, as directed by law enforcement, may access restricted CPN data only when investigating phone calls of a threatening and serious nature, and shall document that access as part of the investigative report;

(4) Carriers transmitting restricted CPN information must take reasonable measures to ensure security of such communications;

(5) CPN information must be destroyed in a secure manner after a reasonable retention period; and

(6) Any violation of these conditions must be reported promptly to the Commission.

[FR Doc. 2017–25917 Filed 11–30–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170510477–7999–02]

RIN 0648–BG88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Regulatory Amendment 6 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement the measures described in Regulatory Amendment 6 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (FMP), as prepared and submitted by the Caribbean Fishery Management Council (Council). This final rule revises the method used to trigger the application of accountability measures (AM) for Council-managed reef fish species or species groups in the exclusive economic zone (EEZ) off Puerto Rico. The purpose of this final rule is to increase the likelihood that optimum yield (OY) is achieved on a continuing basis and to minimize, to the extent practicable, adverse socio-economic effects of AM-based closures.

DATES: This final rule is effective January 2, 2018.

ADDRESSES: Electronic copies of Regulatory Amendment 6, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html.

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, telephone: 727–824–5305; email: sarah.stephenson@noaa.gov.

SUPPLEMENTARY INFORMATION: In the U.S. Caribbean EEZ, the reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On September 19, 2017, NMFS published a proposed rule for Regulatory Amendment 6 and requested public comment (82 FR 43733). The proposed rule and Regulatory Amendment 6 outline the rationale for the actions contained in this final rule. A summary of the management measures described in the Regulatory Amendment 6 and implemented by this final rule is provided below.

The current AMs in the EEZ off Puerto Rico, applicable to Council-managed reef fish species or species groups, require NMFS to reduce the length of the Federal fishing season in the fishing year following a determination that landings for a species or species group exceeded the applicable sector annual catch limit (ACL). As specified in the FMP, the landings determination is based on the applicable 3-year landings average. Currently, an AM-based closure is triggered and applied when the sector ACL is exceeded, even if the total ACL (*i.e.*, combined commercial and recreational ACLs) for a species or species group is not exceeded. For all Council-managed reef fish species or species groups, the total ACL equals the annual estimate of OY and is set at a level that is considered to be sustainable for the species or species group. Therefore, the application of the current AM for Puerto Rico reef fish could translate into yield below the OY from the affected species or species group (if the sector ACL is exceeded, but the total ACL is not), potentially resulting in negative socio-economic impacts.

Sector-specific data are not available for other federally-managed species in

the EEZ off Puerto Rico (e.g., queen conch, spiny lobster) or for other federally-managed species or species groups in the U.S. Caribbean EEZ, so those species and species groups are not included in Regulatory Amendment 6. Therefore, Regulatory Amendment 6 and this proposed rule apply only to federally-managed reef fish species and species groups in the EEZ off Puerto Rico.

Management Measure Contained in This Final Rule

This final rule revises the trigger for implementing AM-based fishing season reductions for all reef fish species or species groups managed by the Council in the EEZ off Puerto Rico. Specifically, an AM-based closure will be triggered only when both the applicable sector (recreational or commercial) ACL and the total ACL for a species or species group are exceeded. If both the sector ACL and the total ACL are exceeded, the AM will be applied to the sector or sectors that experienced the overage. The duration of any implemented AM-based closure will continue to be based on the extent to which the applicable sector ACL was exceeded and will be calculated and applied using the current practices and methods. However, consistent with the current regulations, if NMFS determines that either the sector or total ACL was exceeded because of enhanced data collection and monitoring efforts, instead of an increase in catch, NMFS will not reduce the length of the fishing season.

This final rule to implement Regulatory Amendment 6 is expected to increase the likelihood that OY is achieved on a continuing basis and to minimize adverse socio-economic effects from the implementation of AMs, while still helping to ensure that AM-based closures constrain harvest to the total ACL and prevent overfishing. Modifying the AM trigger for a fishing season reduction, from an overage of the sector ACL to an overage of both the sector and the total ACL, increases the likelihood that OY for a species or species group will be achieved on a continuing basis. Additionally, the revision to the AM is likely to result in the AM being triggered less frequently and thereby result in fewer fishing season reductions. Sector fishing season reductions that are shorter in duration and that may occur less frequently are expected to result in increased socio-economic benefits to the applicable sector and the associated fishing communities. NMFS notes that the method for calculating the landings determination using the 3-year landings

average for a species or species group will not change through this final rule.

NMFS notes that in the codified text for this final rule, amendatory instruction 2 revises the entire § 622.12. While this final rule only affects management in Puerto Rico Federal waters, the section as a whole is revised as a result of the action to more clearly and distinctly describe the AMs and ACLs throughout the U.S. Caribbean EEZ. This final rule also revises some regulatory citations within §§ 622.12 and 622.491 to reflect changes made to the regulatory text as a result of this final rule.

Comments and Responses

NMFS received three total comments on the proposed rule. One comment expressed overall support for the amendment and the rule. One comment was not related to the action in the amendment or the proposed rule. The other comment, as well as NMFS' response, is summarized below.

Comment 1: The AM closure trigger should not be revised to allow a given sector to stay open and continue fishing after it has reached its ACL as any harvest in excess of the sector ACL is not sustainable. Fishing within each sector must be sustainable to avoid negative economic impact.

Response: NMFS disagrees. Under the current application of AMs for Council-managed reef fish in Puerto Rico, yield may be below the OY for a species or species group over time. The Council developed Regulatory Amendment 6 as a means to increase the likelihood that OY for a species or species group will be achieved on a continuing basis while preventing overfishing, and, to the extent practicable, minimizing adverse socio-economic effects to fishers and fishing communities from the application of AMs. For all Council-managed reef fish species or species groups, the total ACL equals an annual estimate of OY and is set at a level that is considered to be sustainable for the species or species group. Therefore, the application of the current AM for Puerto Rico reef fish could translate into yield below the OY from the affected species or species group (if the sector ACL is exceeded, but the total ACL is not), potentially resulting in negative socio-economic impacts. Since sector-specific data is available for reef fish species or species groups in the EEZ off Puerto Rico, sector-specific ACLs were established, yet the overall health of the stocks continues to be managed in relation to the total ACL. Ensuring that the total ACL for a stock is not exceeded, even if there is a specific sector ACL overage, maintains the

overall health of the stock and is also consistent with the use of AMs for reef fish throughout the rest of the Caribbean EEZ, where fishing is not managed by sectors. The AM trigger revision in this final rule increases the likelihood that OY for a species or species group will be achieved on a continuing basis without reducing the long-term sustainability of the resource.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Regulatory Amendment 6, the FMPs, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Caribbean, Fisheries, Fishing, Puerto Rico.

Dated: November 27, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Revise § 622.12 to read as follows:

§ 622.12 Annual catch limits (ACLs) and accountability measures (AMs) for Caribbean island management areas/ Caribbean EEZ.

(a) *Puerto Rico management area.* See appendix E of this part for specification of the Puerto Rico management area.

(1) *Queen conch.* See § 622.491 regarding seasonal and area closure provisions and ACL closure provisions applicable to queen conch.

(i) *Commercial ACL.* For the EEZ only, 0 lb (0 kg), round weight.

(ii) *Recreational ACL.* For the EEZ only, 0 lb (0 kg), round weight.

(2) *Reef fish.* Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for the Puerto Rico management area. As described in the FMP, for each species or species group in this paragraph (a)(2), any fishing season reduction required under paragraph (a)(2)(i) or (ii) of this section will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year.

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, have exceeded the applicable species or species group commercial ACL, as specified in this paragraph (a)(2)(i), and the combined commercial and recreational landings have exceeded the applicable combined commercial and recreational sector ACL (total ACL), as specified in paragraph (a)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups for the commercial sector that year by the amount necessary to ensure that commercial landings do not exceed the applicable commercial ACL for the species or species group. If NMFS determines that either the applicable commercial ACL or total ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in catch of the species or species group, NMFS will not reduce the length of the commercial fishing season for the applicable species or species group the following fishing

year. The commercial ACLs, in round weight, are as follows:

(A) *Parrotfishes*—52,737 lb (23,915 kg).

(B) *Snapper Unit 1*—284,685 lb (129,131 kg).

(C) *Snapper Unit 2*—145,916 lb (66,186 kg).

(D) *Snapper Unit 3*—345,775 lb (156,841 kg).

(E) *Snapper Unit 4*—373,295 lb (169,324 kg).

(F) *Groupers*—177,513 lb (80,519 kg).

(G) *Angelfish*—8,984 lb (4,075 kg).

(H) *Boxfish*—86,115 lb (39,061 kg).

(I) *Goatfishes*—17,565 lb (7,967 kg).

(J) *Grunts*—182,396 lb (82,733 kg).

(K) *Wrasses*—54,147 lb (24,561 kg).

(L) *Jacks*—86,059 lb (39,036 kg).

(M) *Scups and porgies, combined*—24,739 lb (11,221 kg).

(N) *Squirrelfish*—16,663 lb (7,558 kg).

(O) *Surgeonfish*—7,179 lb (3,256 kg).

(P) *Triggerfish and filefish, combined*—58,475 lb (26,524 kg).

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, have exceeded the applicable species or species group recreational ACL, as specified in this paragraph (a)(2)(ii), and the combined commercial and recreational landings have exceeded the applicable combined commercial and recreational sector ACL (total ACL), as specified in paragraph (a)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups for the recreational sector that year by the amount necessary to ensure that recreational landings do not exceed the applicable species or species group recreational ACL. If NMFS determines that either the applicable recreational ACL or total ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. The recreational ACLs, in round weight, are as follows:

(A) *Parrotfishes*—15,263 lb (6,921 kg).

(B) *Snapper Unit 1*—95,526 lb (43,330 kg).

(C) *Snapper Unit 2*—34,810 lb (15,790 kg).

(D) *Snapper Unit 3*—83,158 lb (37,720 kg).

(E) *Snapper Unit 4*—28,509 lb (12,931 kg).

(F) *Groupers*—77,213 lb (35,023 kg).

(G) *Angelfish*—4,492 lb (2,038 kg).

(H) *Boxfish*—4,616 lb (2,094 kg).

(I) *Goatfishes*—362 lb (164 kg).

(J) *Grunts*—5,028 lb (2,281 kg).

(K) *Wrasses*—5,050 lb (2,291 kg).

(L) *Jacks*—51,001 lb (23,134 kg).

(M) *Scups and porgies, combined*—2,577 lb (1,169 kg).

(N) *Squirrelfish*—3,891 lb (1,765 kg).

(O) *Surgeonfish*—3,590 lb (1,628 kg).

(P) *Triggerfish and filefish, combined*—21,929 lb (9,947 kg).

(iii) *Total ACLs.* The total ACLs (combined commercial and recreational ACL), in round weight, are as follows:

(A) *Parrotfishes*—68,000 lb (30,844 kg).

(B) *Snapper Unit 1*—380,211 lb (172,461 kg).

(C) *Snapper Unit 2*—180,726 lb (81,976 kg).

(D) *Snapper Unit 3*—428,933 lb (194,561 kg).

(E) *Snapper Unit 4*—401,804 lb (182,255 kg).

(F) *Groupers*—254,726 lb (115,542 kg).

(G) *Angelfish*—13,476 lb (6,113 kg).

(H) *Boxfish*—90,731 lb (41,155 kg).

(I) *Goatfishes*—17,927 lb (8,132 kg).

(J) *Grunts*—187,424 lb (85,014 kg).

(K) *Wrasses*—59,197 lb (26,851 kg).

(L) *Jacks*—137,060 lb (62,169 kg).

(M) *Scups and porgies, combined*—27,316 lb (kg).

(N) *Squirrelfish*—20,554 lb (9,323 kg).

(O) *Surgeonfish*—10,769 lb (4,885 kg).

(P) *Triggerfish and filefish, combined*—80,404 lb (36,471 kg).

(3) *Spiny lobster.* Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. The ACL is based on the combined Caribbean EEZ and territorial landings for the Puerto Rico management area. If landings, as estimated by the SRD, have exceeded the ACL, as specified in this paragraph (a)(3), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for spiny lobster that year by the amount necessary to ensure landings do not exceed the ACL. If NMFS determines the ACL was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch, NMFS will not reduce the length of the fishing season the following fishing year. As described in the FMP, any fishing season reduction required as a result of this paragraph (a)(3) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October

1 forward, toward the end of the fishing year. The ACL is 327,920 lb (148,742 kg), round weight.

(b) *St. Croix management area*. See appendix E of this part for specification of the St. Croix management area.

(1) *Queen conch*. See § 622.491 regarding seasonal and area closure provisions and ACL closure provisions applicable to queen conch. The ACL is 50,000 lb (22,680 kg), round weight.

(2) *Reef fish*. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exception of goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for the St. Croix management area. If landings, as estimated by the SRD, have exceeded the applicable ACL for a species or species group, as specified in this paragraph (b)(2), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species group that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. As described in the FMP, for each species or species group in this paragraph (b)(2), any fishing season reduction required as a result of this paragraph (b)(2) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. The ACLs, in round weight, are as follows:

- (i) *Parrotfishes*—240,000 lb (108,863 kg).
- (ii) *Snappers*—102,946 lb (46,696 kg).
- (iii) *Groupers*—30,435 lb (13,805 kg).
- (iv) *Angelfish*—305 lb (138 kg).
- (v) *Boxfish*—8,433 lb (3,825 kg).
- (vi) *Goatfishes*—3,766 lb (1,708 kg).
- (vii) *Grunts*—36,881 lb (16,729 kg).
- (viii) *Wrasses*—7 lb (3 kg).
- (ix) *Jacks*—15,489 lb (7,076 kg).
- (x) *Scups and porgies, combined*—4,638 lb (2,104 kg).
- (xi) *Squirrelfish*—121 lb (55 kg).

(xii) *Surgeonfish*—33,603 lb (15,242 kg).

(xiii) *Triggerfish and filefish, combined*—24,980 lb (11,331 kg).

(3) *Spiny lobster*. Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. The ACL is based on the combined Caribbean EEZ and territorial landings for the St. Croix management area. If landings, as estimated by the SRD, have exceeded the ACL, as specified in this paragraph (b)(3), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season that year by the amount necessary to ensure landings do not exceed the ACL. If NMFS determines the ACL was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch, NMFS will not reduce the length of the fishing season for the following fishing year. As described in the FMP, any fishing season reduction required as a result of this paragraph (b)(3) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. The ACL is 107,307 lb (48,674 kg), round weight.

(c) *St. Thomas/St. John management area*. See appendix E of this part for specification of the St. Thomas/St. John management area.

(1) *Queen conch*. See § 622.491 regarding seasonal and area closure provisions and ACL closure provisions applicable to queen conch. The ACL is 0 lb (0 kg), round weight, for the EEZ only.

(2) *Reef fish*. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exception of goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for St. Thomas/St. John management area. If landings, as estimated by the SRD, have exceeded the applicable ACL for a species or species group, as specified in this paragraph (c)(2), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species group that year by the amount necessary to ensure landings do not

exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. As described in the FMP, for each species or species group in this paragraph (c)(2), any fishing season reduction required as a result of this paragraph (c)(2) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. The ACLs, in round weight, are as follows:

- (i) *Parrotfishes*—42,500 lb (19,278 kg).
- (ii) *Snappers*—133,775 lb (60,679 kg).
- (iii) *Groupers*—51,849 lb (23,518 kg).
- (iv) *Angelfish*—7,897 lb (3,582 kg).
- (v) *Boxfish*—27,880 lb (12,646 kg).
- (vi) *Goatfishes*—320 lb (145 kg).
- (vii) *Grunts*—37,617 lb (17,063 kg).
- (viii) *Wrasses*—585 lb (265 kg).
- (ix) *Jacks*—52,907 lb (23,998 kg).
- (x) *Scups and porgies, combined*—21,819 lb (9,897 kg).
- (xi) *Squirrelfish*—4,241 lb (1,924 kg).
- (xii) *Surgeonfish*—29,249 lb (13,267 kg).

(xiii) *Triggerfish and filefish, combined*—74,447 lb (33,769 kg).

(3) *Spiny lobster*. Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. The ACL is based on the combined Caribbean EEZ and territorial landings for the St. Thomas/St. John management area. If landings, as estimated by the SRD, have exceeded the ACL, as specified in this paragraph (c)(3), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season that year by the amount necessary to ensure landings do not exceed the ACL. If NMFS determines the ACL was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch, NMFS will not reduce the length of the fishing season for the following fishing year. As described in the FMP, any fishing season reduction required as a result of this paragraph (c)(3) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through

September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. The ACL is 104,199 lb (47,264 kg), round weight.

(d) *Caribbean EEZ*. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMPs. The ACLs are based on the combined Caribbean EEZ and territorial landings, throughout the Caribbean EEZ. If landings from the Caribbean EEZ for tilefish and aquarium trade species, as estimated by the SRD, have exceeded the applicable ACL, as specified in this paragraph (d), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the applicable ACL was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch, NMFS will not reduce the length of the fishing season for the following fishing year. As described in the FMPs, for each species or species group in this paragraph (d), any fishing season reduction required as a result of this paragraph (d) will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. The ACLs, in round weight, are as follows:

(1) *Tilefish*—14,642 lb (6,641 kg).

(2) *Aquarium trade species*—8,155 lb (3,699 kg).

(e) *Closure provisions*—(1)

Restrictions applicable after a Puerto Rico closure. (i) Restrictions applicable

after a Puerto Rico commercial closure for reef fish species or species groups. During the closure period announced in the notification filed pursuant to paragraph (a)(2)(i) of this section, the commercial sector for species or species groups included in the notification is closed and such species or species groups in or from the Puerto Rico management area may not be purchased or sold. Harvest or possession of such species or species groups in or from the Puerto Rico management area is limited to the recreational bag and possession limits unless the recreational sector for the species or species group is closed and the restrictions specified in paragraph (e)(1)(iii) of this section apply.

(ii) Restrictions applicable after a Puerto Rico recreational closure for reef fish species or species groups. During the closure period announced in the notification filed pursuant to paragraph (a)(2)(ii) of this section, the recreational sector for species or species groups included in the notification is closed and the recreational bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero. If the seasons for both the commercial and recreational sectors for such species or species groups are closed, the restrictions specified in paragraph (e)(1)(iii) of this section apply.

(iii) Restrictions applicable when both Puerto Rico commercial and Puerto Rico recreational sectors for reef fish species or species groups are closed. If the seasons for both the commercial and recreational sectors for a species or species group are closed, such species or species groups in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero.

(iv) Restrictions applicable after a spiny lobster closure in Puerto Rico. During the closure period announced in the notification filed pursuant to paragraph (a)(3) of this section, both the commercial and recreational sectors are closed. Spiny lobster in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

(2) *Restrictions applicable after a St. Croix, St. Thomas/St. John, or Caribbean EEZ closure.* During the closure period announced in the notification filed pursuant to paragraph (b), (c), or (d) of this section, such species or species groups in or from the applicable management area of the Caribbean EEZ may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the applicable management area of the Caribbean EEZ are zero.

■ 3. In § 622.491, revise the first sentence of paragraph (b) to read as follows:

§ 622.491 Seasonal and area closures.

* * * * *

(b) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources in Puerto Rico and the U.S. Virgin Islands, when the ACL, as specified in § 622.12(b)(1), is reached or projected to be reached, the Regional Administrator will close the Caribbean EEZ to the harvest and possession of queen conch, in the area east of 64°34' W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register. * * *

[FR Doc. 2017-25847 Filed 11-30-17; 8:45 am]

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Proposed Rules

Federal Register

Vol. 82, No. 230

Friday, December 1, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–16–0107; SC17–985–1A PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2017–2018 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to revise the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2017–2018 marketing year, which began on June 1, 2017. This proposal would increase the Native spearmint oil salable quantity and the allotment percentage. The Committee recommended this action for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market. This proposal also contains a formatting change to subpart references to bring the language into conformance with the Office of the Federal Register requirements.

DATES: Comments must be received by December 18, 2017.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. All comments should reference the

document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: DaleJ.Novotny@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah). Part 985 (referred to as “the Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Marketing Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally,

because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would increase the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2017–2018 marketing year, which ends on May 31, 2018.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2017–2018 marketing year under the Order. Prior to this proposed rule, the salable quantity and allotment percentage for Native spearmint oil was initially established at 1,075,051 pounds and 44 percent, respectively, in a final rule published May 25, 2017 (82 FR 24001). This proposed rule would increase the Native spearmint oil salable quantity from 1,075,051 pounds to 1,514,902 pounds

and the allotment percentage from 44 percent to 62 percent.

Under the volume regulation provisions of the Order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need for limiting the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary of Agriculture for volume regulation.

Volume regulation under the Order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

The full Committee met on October 19, 2016, to consider its marketing policy for the 2017–2018 marketing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil for the 2017–2018 marketing year. The Committee recommended salable quantities of 774,645 pounds and 1,075,051 pounds, and allotment percentages of 36 percent and 44 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the **Federal Register** on March 31, 2017 (82 FR 16001). Comments on the proposed rule were solicited from interested persons until May 1, 2017. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2017–2018 marketing year was published in the **Federal Register** on May 25, 2017 (82 FR 24001).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52, the full eight-member Committee met again on September 25, 2017, and October 25, 2017, to evaluate the current year's volume control regulation. At the meetings, the Committee assessed the current market conditions for spearmint oil in relation to the salable quantities and allotment percentages established for the 2017–2018 marketing year. The Committee considered a number of factors, including the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. The Committee determined that the established salable quantity and allotment percentage in effect for Native spearmint oil for the 2017–2018 marketing year should be increased to take into account the unanticipated rise in market demand for that class of spearmint oil.

At the September 25, 2017, meeting, the Committee recommended increasing the 2017–2018 marketing year Native spearmint oil salable quantity from 1,075,051 pounds to 1,221,696 pounds and the allotment percentage from 44 percent to 50 percent. The recommendation to increase the salable quantity and allotment percentage passed with a vote of seven members in favor and one opposed. The member opposed to the recommendation favored increasing the Native spearmint oil salable quantity and allotment percentage for the 2017–2018 marketing year, but at an undetermined level lower than what was recommended.

At the October 25, 2017, meeting, the Committee met again to consider an additional increase to the 2017–2018 marketing year salable quantity and allotment percentage for Native spearmint oil. The Committee recommended further increasing the 2017–2018 marketing year Native spearmint oil salable quantity from 1,221,696 pounds to 1,514,902 pounds and the allotment percentage from 50 percent to 62 percent. The recommendation to further increase the salable quantity and allotment percentage passed with a unanimous vote.

Thus, this proposal would make additional amounts of Native spearmint oil available to the market by increasing the salable quantity and allotment percentage previously established under the Order for the 2017–2018 marketing year. This proposed rule would increase the Native spearmint oil salable quantity by 439,851 pounds, to 1,514,902 pounds, and would raise the allotment percentage 18 percentage points, to 62 percent. Such additional oil would

come from releasing Native spearmint oil held by producers in the reserve pool. As of May 31, 2017, the Committee records show that the reserve pool for Native spearmint oil contained 996,050 pounds of oil, an amount considered excessive relative to market conditions.

At both the September and October 2017 meetings, the Committee staff reported that demand for Native spearmint oil has been greater than previously anticipated. Committee records indicate that 2017–2018 marketing year sales to date (945,683 pounds) are tracking fairly closely to sales for the same period in the 2016–2017 marketing year (1,095,112 pounds). However, handlers reported to the Committee that an additional 345,446 pounds of Native spearmint oil are committed to be sold, which would leave a deficit of 216,078 pounds of oil (1,075,051 pounds salable quantity minus 945,683 pounds sold to date and 345,446 pounds committed) to supply the market until May 31, 2018. Another factor that contributed to the short supply was that only 143,011 pounds of salable product carried over from the 2016–2017 marketing year into the 2017–2018 marketing year, which was 46,809 pounds less than expected. The Committee initially estimated in October 2016 that the total available supply of Native spearmint oil for the 2017–2018 marketing year would be 1,264,871 pounds, but that amount was reduced to 1,218,158 when the smaller carry-in quantity is accounted for.

The Committee initially estimated the trade demand for Native spearmint oil for the 2017–2018 marketing year to be 1,250,000. At the September 25, 2017, meeting, the Committee revised the expected trade demand for the 2017–2018 marketing year to be 1,338,820. At the October 25, 2017, meeting, the Committee further revised the expected trade demand for the 2017–2018 marketing year to 1,600,000 pounds. If realized, trade demand would be 381,842 pounds above the quantity of Native spearmint oil available under the volume control levels implemented in May 2017 (1,218,158 pounds available prior to this rule minus 1,600,000 pounds estimated demand equals a deficit of 381,842 pounds). Without increasing the salable quantity and allotment percentage, the market for Native spearmint oil may be shorted. The increased quantity of Native spearmint oil (439,851 pounds) that would be made available to the market as a result of this rulemaking would ensure that market demand is fully satisfied in the current year and that there would be approximately 20,171

pounds of Native spearmint oil salable inventory available to the market for the start of the 2018–2019 marketing year, which begins on June 1, 2018.

In making the recommendation to increase the salable quantity and allotment percentage of Native spearmint oil, the Committee considered all currently available information on the price, supply, and demand of Native spearmint oil. The Committee also considered reports and other information from handlers and producers in attendance at the meeting. Lastly, the Committee manager presented information and reports that were provided to the Committee staff by handlers and producers.

This proposal would increase the 2017–2018 marketing year Native spearmint oil salable quantity by 439,851 pounds, to a total of 1,514,902 pounds. However, the Committee expects that not all producers have Native spearmint oil held in reserve. As such, the Committee calculates that 37,796 pounds of the Native spearmint oil salable quantity will go unfulfilled. Therefore, the total supply of Native spearmint oil that the Committee anticipates actually being available to the market over the course of the 2017–2018 marketing year would be increased to 1,620,117 pounds (2017–2018 marketing year salable quantity plus salable carry-in of 143,011 pounds from the 2016–2017 marketing year minus an unused allotment of 37,796 pounds due to lack of pool oil). Actual sales of Native spearmint oil for the 2016–2017 marketing year totaled 1,287,691 pounds. The 5-year average of Native spearmint oil sales is 1,309,793 pounds.

The Committee estimates that this action would result in 20,171 pounds of salable Native spearmint oil being carried into the 2018–2019 marketing year. While 20,171 pounds is a relatively low quantity of salable Native spearmint oil to end the marketing year, reserve pool oil could be released into the market under a future relaxation of the volume regulation should it be necessary to adequately supply the market prior to the beginning of the 2018–2019 marketing year. The Committee estimates that a total of 1,237,237 pounds of Native spearmint oil would be available from the reserve pool if needed.

As mentioned previously, when the original 2017–2018 marketing policy statement was drafted, handlers estimated the demand for Native spearmint oil for the 2017–2018 marketing year to be 1,250,000 pounds. The Committee's initial recommendation for the establishment of the Native spearmint oil salable

quantity and allotment percentage for the 2017–2018 marketing year was based on that estimate. The Committee did not anticipate the increase in demand for Native spearmint oil that the market is currently experiencing and did not make allowances for it when the marketing policy was initially adopted.

At the September 25, 2017, meeting, the Committee revised its estimate of the current trade demand to 1,338,820 pounds, and further increased that estimate to 1,600,000 pounds at the October 25, 2017, meeting. The Committee now believes that the supply of Native spearmint oil available to the market under the initially established salable quantity and allotment percentage would be insufficient to satisfy the current level of demand for oil at reasonable price levels. The Committee further believes that the increase in the salable quantity and allotment percentage proposed in this action is vital to ensuring an adequate supply of Native spearmint oil is available to the market moving forward.

The Committee's stated intent in the use of the Order's volume control regulation is to keep adequate supplies available to meet market needs and to maintain orderly marketing conditions. With that in mind, the Committee developed its recommendation for increasing the Native spearmint oil salable quantity and allotment percentage for the 2017–2018 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) Initial estimated 2017–2018 Native Allotment Base—2,443,297 pounds. This is the allotment base estimate on which the original 2017–2018 salable quantity and allotment percentage was based.

(B) Revised 2017–2018 Native Allotment Base—2,443,391 pounds. This is 94 pounds more than the initial estimated allotment base of 2,443,297 pounds. The difference is the result of annual adjustments made to the allotment base according to the provisions of the Order.

(C) Initial 2017–2018 Native Allotment Percentage—44 percent. This was unanimously recommended by the Committee on October 19, 2016.

(D) Initial 2017–2018 Native Salable Quantity—1,075,051 pounds. This figure is 44 percent of the original estimated 2017–2018 allotment base of 2,443,297 pounds.

(E) Adjusted Initial 2017–2018 Native Salable Quantity—1,075,092 pounds. This figure reflects the salable quantity actually available at the beginning of the 2017–2018 marketing year. This quantity is derived by applying the

initial 44-percent allotment percentage to the revised allotment base of 2,443,391.

(F) Proposed Revision to the 2017–2018 Native Salable Quantity and Allotment Percentage:

(1) Proposed Increase in the Native Allotment Percentage—18 percent. The Committee recommended an increase of six percentage points at its September 25, 2017, meeting, and a further 12 percentage points at its October 25, 2017, meeting for a total increase of 18 percentage points over the initial Native allotment percentage.

(2) Proposed Revised 2017–2018 Native Allotment Percentage—62 percent. This number was derived by adding the increase of 18 percentage points to the initially established 2017–2018 allotment percentage of 44 percent.

(3) Proposed Revised 2017–2018 Native Salable Quantity—1,514,902 pounds. This amount is 62 percent of the revised 2017–2018 allotment base of 2,443,391 pounds.

(4) Computed Increase in the 2017–2018 Native Salable Quantity as a Result of the Proposed Revision—439,851 pounds. This figure represents 18 percent of the 2017–2018 revised allotment base.

(5) Expected Actual Increase in the Native Spearmint Oil Available to the Market for the 2017–2018 Marketing Year—402,055 pounds. This amount is based on the Committee's estimation of Native spearmint oil that is actually held by producers in the reserve pool that may enter the market as a result of this proposal. The Committee estimates that approximately 37,796 pounds of the computed increase would go unfulfilled due to producers who do not have sufficient Native spearmint oil in reserve to utilize their full allotted salable quantity.

Scotch spearmint oil is also regulated by the Order. As mentioned previously, a salable quantity and allotment percentage for Scotch spearmint oil was established in a final rule published in the **Federal Register** on May 25, 2017 (82 FR 24001). At the September 25, 2017, meeting, the Committee considered the current production, inventory, and marketing conditions for Scotch spearmint oil. After receiving reports from the Committee staff and comments from the industry, the consensus of the Committee was that the previously established salable quantity and allotment percentage for Scotch spearmint oil was appropriate for the current market conditions. As such, the Committee took no further action with regards to Scotch spearmint oil for the 2017–2018 marketing year.

This proposed rule would relax the regulation of Native spearmint oil and would allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this proposed rule, the Committee's revised marketing policy statement for the 2017–2018 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50. During its discussion of revisions to the 2017–2018 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the estimated production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The proposed increase in the Native spearmint oil salable quantity and allotment percentage would account for the anticipated market needs for that class of oil. In determining anticipated market needs, the Committee considered changes and trends in historical sales, production, and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the Order, and approximately 41 producers of Scotch spearmint oil and approximately 94 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that only two of the eight handlers regulated by the Order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 12 of the 39 Scotch spearmint oil producers and 31 of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, the majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the spearmint oil industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control regulation, the supply and price of spearmint oil would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and drive end users to source flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The Order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This proposed rule would increase the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2017–2018 marketing year, which ends May 31, 2018. The 2017–2018 Native spearmint oil salable quantity was initially established at 1,075,051 pounds and the allotment percentage initially set at 44 percent. This proposed rule would increase the Native spearmint oil salable quantity to 1,514,902 pounds and the allotment percentage to 62 percent.

Based on the information and projections available at the September 25, 2017, and October 25, 2017, meetings, the Committee considered several alternatives to this increase. The Committee considered leaving the salable quantity and allotment percentage unchanged, and also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information and input from all interested industry participants, and believes that the levels recommended would achieve the desired objectives. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 (Generic Specialty Crops). No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would relax the volume regulation requirements established under the Order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this action.

In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. The September 25, 2017, and October 25, 2017, meetings were public and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and

information collection impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because handlers are aware of this action, which was recommended by the Committee at a public meeting, and the subject matter of this proposal is not complex. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

- 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

[Subpart Redesignated as Subpart A]

- 2. Redesignate “Subpart—Order Regulating Handling” as “Subpart A—Order Regulating Handling”.

[Subpart Redesignated as Subpart B and Amended]

- 3. Redesignate “Subpart—Administrative Rules and Regulations” as subpart B and revise the heading to read as follows:

Subpart B—Administrative Requirements

- 4. In § 985.236, revise paragraph (b) to read as follows:

§ 985.236 Salable quantities and allotment percentages—2017–2018 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,514,902 pounds and an allotment percentage of 62 percent.

Dated: November 28, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–25965 Filed 11–30–17; 8:45 am]

BILLING CODE 3410–02–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2005–6]

Statutory Cable, Satellite, and DART License Reporting Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office (“Office”) is seeking comment on proposed rules governing the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements. With this Notice of Proposed Rulemaking, the Office intends to resolve issues raised in an earlier Notice of Inquiry directed towards cable reporting practices,¹ as well as address additional issues that have subsequently arisen. Further, to the extent this rulemaking proposes changes to the Office’s section 111 regulations governing the processing of refunds, supplemental or amended payments, or calculation of interest, as well as case management procedures, the Office proposes similar changes with regard to the regulations governing the statutory licenses for satellite carriers and digital audio recording devices or media.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on January 16, 2018.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://copyright.gov/rulemaking/section111>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact

information below for special instructions.

FOR FURTHER INFORMATION CONTACT:

Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at sdam@loc.gov, Regan A. Smith, Deputy General Counsel, by email at resm@loc.gov, or Anna Chauvet, Assistant General Counsel, by email at achau@loc.gov, or any of them by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act (“Act”), title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a “primary transmission” made by a television station licensed by the Federal Communications Commission (“FCC”). Cable operators that retransmit broadcast signals in accordance with this provision are required to pay royalty fees to the Copyright Office (“Office”), among other requirements. Payments made under section 111 are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution of these funds to copyright owners eligible to receive a share of the royalties.² In conjunction with royalty payments, cable operators must also complete and file statements of account (“SOAs”), which provide a record regarding the cable operators’ retransmissions and royalty payments to “promote uniform and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright [Royalty Judges] in reviewing and using the information provided.”³ Information provided on SOAs includes, among other things, the number of channels on which the cable system made secondary transmissions, the number of subscribers to the cable system, and the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions.⁴ Cable operators file the SOAs with the Office using an appropriate form provided by the Office.⁵

² The Office distributes those royalties in accordance with periodic distribution orders entered by the Copyright Royalty Board.

³ 42 FR 61051, 61054 (Dec. 1, 1977) (explaining benefits of using a standard SOA form, referencing the Copyright Royalty Tribunal, a precursor to the current Copyright Royalty Judges system).

⁴ 37 CFR 201.17(e)(5)–(7).

⁵ *Id.* 201.17(d). The SOA forms are available in PDF and Excel format on the Office’s Web site at https://www.copyright.gov/licensing/sec_111.html.

In 2005, the Motion Picture Association of America, Inc. (“MPAA”), on behalf of its member companies and other producers and/or distributors of movies and television series (hereinafter, “Program Suppliers”), filed a petition for rulemaking with the Copyright Office requesting the commencement of a proceeding to address several issues related to the SOA reporting practices of cable operators under section 111 (the “Petition”). The Petition asked the Office to adopt a number of changes to its section 111 regulations and SOAs to “improve the nature of the information reported on the SOAs by cable operators,” believing them to be “critical to efficient and effective compliance review” of SOAs by copyright owners.⁶ The Office published a notice of inquiry (“NOI”) seeking comment on Program Suppliers’ proposals and recommendations,⁷ and multiple parties filed comments in response to the NOI, as well as reply comments.⁸

Since the Office issued that NOI, the Satellite Television Extension and Localism Act of 2010 (“STELA”) and STELA Reauthorization Act of 2014 (“STELARA”) updated section 111 in several respects.⁹ Among other things, STELA modified the calculation of royalty rates paid by cable operators, and updated certain provisions to accommodate the transition to digital television broadcasts.¹⁰ In addition, pursuant to STELA, the Copyright Office issued a regulation implementing a confidential procedure under which a qualified independent auditor working on behalf of all copyright owners can “confirm the correctness of the calculations and royalty payments reported” on a cable SOA filed for accounting periods commencing on or after January 1, 2010.¹¹ STELARA, in turn, amended section 111 to expand the local service area of low power television stations.¹²

This notice of proposed rulemaking (“NPRM”) addresses issues raised in response to the NOI that are still

relevant, and notes where intervening statutory and/or regulatory changes may have mooted some issues. This NPRM also proposes revisions to SOA forms and/or the Office’s regulations that are intended to streamline administration of SOAs by the Office’s Licensing Division, some of which would also apply to remitters making use of the section 119 (satellite) or chapter 10 (“DART”) licenses.

The Office welcomes public input on the following proposed changes, as well as other suggestions on streamlining or otherwise improving reporting practices for the section 111 license.

II. Proposed Section 111—Specific Changes

A. Relationship Between Gross Receipts (Space K) and Subscriber and Rate Information (Space E)

Section 111 requires cable operators to report, in public filings to the Copyright Office, a variety of information regarding the secondary transmissions licensed under the statute, including the number of channels by which the system made secondary transmissions, the names and locations of all primary transmitters used, and, as particularly relevant here, the “total number of [cable system] subscribers” and the “gross amounts” paid to the cable system by these subscribers “for the basic service of providing secondary transmissions of primary broadcast transmitters.”¹³ Cable operators pay a percentage from these reported gross receipts “for the privilege” of providing such secondary transmissions (that is, a base rate), and additional amounts for any distant signal equivalent (“DSEs”) carried by the cable system. These amounts in turn are distributed as royalty fees to copyright owners whose works have been broadcast pursuant to the statutory license.¹⁴ The statute further provides that copyright owners may conduct confidential audits to verify the information provided on the SOAs, including the number of subscribers and relevant subscription rates, as well as the total amount of gross receipts collected from these subscribers at the reported rates, to ensure that they have received accurate compensation under the statutory license.¹⁵

In accordance with this statutory design, the Copyright Office has implemented these requirements through its regulations¹⁶ and SOA forms. The Office addressed the

statutory requirements to report the “number of subscribers” and “gross amounts” paid to cable operators as part of its initial regulations implementing section 111. In a notice of proposed rulemaking, the Office noted that reporting “[t]he ‘number of subscribers’ alone will serve no real purpose.”¹⁷ Instead, the Office concluded that the statutory requirement was “intended to provide copyright owners with a basis for a comparison with the reported gross receipts.”¹⁸ Accordingly, the Office “proposed . . . that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this purpose.”¹⁹ In a subsequent final rule adopting regulatory language almost identical to the present section 201.17(e)(6), the Office noted that “although this information ‘will not provide a definitive or detailed comparison with the reported gross receipts,’ it will be useful for at least a rough comparison with the reported gross receipts, and gives meaning to the statutory requirement that the ‘number of subscribers’ be given.”²⁰

To facilitate this “rough comparison with the reported gross receipts,” under section 201.17(e)(6) cable operators must provide “[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters”; “[t]he number of subscribers to the cable system in each such subscriber category”; and “[t]he charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions.”²¹ These regulatory requirements are reflected in Space E of the SOA forms (titled “Secondary Transmission Service: Subscribers and Rates”), which requests information that “should cover all categories of secondary transmission service of the cable system,” including “the number of subscribers to the cable system, broken down by categories of secondary transmission service,” and the “rate charged for each category of service.”²² Section 201.17(e)(7) of the Office’s regulation addresses the statutory reference to “gross amounts” and is reflected in Space K (titled “Gross Receipts”), which requires cable

⁶ Program Suppliers, Petition for Rulemaking 2 (June 7, 2005) (“Petition”).

⁷ 71 FR 45749.

⁸ The initial and reply comments have been posted on the Office’s Web site at <https://copyright.gov/rulemaking/section111>.

⁹ See Satellite Television Extension and Localism Act of 2010, Public Law 111–175, 124 Stat. 1218 (2010) (“STELA”); STELA Reauthorization Act of 2014, Public Law 113–200, 128 Stat. 2059 (2014) (“STELARA”).

¹⁰ 17 U.S.C. 111(d)(1)(B)–(F), (f)(4); see generally 75 FR 56868 (Sept. 17, 2010) (interim rule implementing STELA).

¹¹ 17 U.S.C. 111(d)(6); 37 CFR 201.16(h), (l), (o).

¹² 17 U.S.C. 111(f)(5).

¹³ 17 U.S.C. 111(d)(1)(A).

¹⁴ *Id.* 111(d)(1)(B)(i)–(iv).

¹⁵ *Id.* 111(d)(6).

¹⁶ 37 CFR 201.17(e)(6)–(7).

¹⁷ 42 FR at 61054.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 43 FR 958, 959 (Jan. 5, 1978).

²¹ 37 CFR 201.17(e)(6)(i)–(iii).

²² Paper Form SA1–2 at 2, Space E (“Short Form SOA”); Paper Form SA3 at 2, Space E (“Long Form SOA”).

operators to “[e]nter the total of all amounts (gross receipts) paid to [the] cable system by subscribers for the system’s secondary transmission service (as identified in Space E) during the accounting period.”²³

Many of the issues raised by Program Suppliers’ Petition address whether the subscriber and rate information provided by cable operators under the Office’s current regulations is sufficient to provide the copyright owner with the intended “rough comparison” with the required gross receipts information, a concern the Office understands remains germane as the cable marketplace continues to evolve since the regulation was first promulgated. Program Suppliers stated that SOAs do not “require adequate information for a meaningful comparison between Space E and Space K,”²⁴ and requested the Office to “require greater congruity between the ‘gross receipts’ information and the subscriber and rate information provided on the SOAs,” and “greater detail concerning the nature of revenues that a cable operator includes and excludes in its ‘gross receipts.’”²⁵ As explained below, while the Office tentatively concludes that it is not advisable to adopt all of the Program Suppliers’ recommendations, the Office proposes some changes to the information sought in Space E to better facilitate the ability of copyright owners to verify gross receipts and other information provided on SOAs through the auditing mechanism set forth in 37 CFR 201.16.

1. Proposed Requirement to Explain Variation in Data Between Spaces E and K

In proposing that the Office require “greater congruity” between these spaces, Program Suppliers specifically requested that the Office instruct remitters that the gross receipts reported in Space K should approximate calculated gross receipts (*i.e.*, the number of subscribers in each category identified in Space E, multiplied by the applicable rate) and require cable operators to explain briefly in Space K any variation of more than 10% between

calculated and reported gross receipts.²⁶ National Association of Broadcasters (“NAB”) supported this proposal, stating that “requiring greater congruity between the ‘gross receipts’ information in Space K . . . and the subscriber and rate information in Space E would allow the Office to conduct its compliance reviews with the benefit of more readily comparable base data.”²⁷

Cable associations National Cable & Telecommunications Association (“NCTA”) and American Cable Association (“ACA”) opposed this suggestion. Specifically, ACA maintained that title 17 does not require such detailed reporting and suggested that instead, copyright owners should request additional information about individual SOAs if the filing appeared questionable.²⁸ NCTA stated that even if the Office adopted all of the Program Suppliers’ proposed changes to the SOA (discussed further below), the “calculated gross receipts” derived from Space E and actual gross receipts would still not be identical. For example, NCTA asserted that simply multiplying tier charges by the number of subscribers per tier would not equal gross receipts since both tier charges and subscribership fluctuate over six months due to, among other things, periodic rate adjustments to “reflect inflation, changes in the channels offered, [and] increased programming costs for the basic tier.”²⁹ NCTA also stated that variations between gross receipts derived from using the data in Space E and the actual gross receipts reported under Space K result because the number of subscribers in Space E are reported as of the last day of the accounting period, whereas gross receipts are accumulated over the entire six-month period.³⁰

The Office understands Program Suppliers’ position that a variance explanation requirement would aid copyright owners in making a rough comparison between the amount of “gross receipts” given in Space K and the result of multiplying the number of subscribers by the rates given in Space E. This requirement, however, would go beyond what has traditionally been required of remitters and may be inappropriate in light of differences in how data is reported in the two spaces. For example, the amount in Space K may vary depending on whether the cable system’s accounting is done on an accrual or cash basis and, as noted by

NCTA, a comparison between Spaces E and K is difficult since the information in the two spaces reflects different time periods (*i.e.*, Space E calls for figures as of the last day of the accounting period whereas Space K calls for gross receipts for the entire accounting period).

The Office is also concerned that a variance explanation requirement could increase burdens on the Office, by requiring its Licensing Division examiners to assume a far greater role in examination of SOAs than has traditionally been the case. Under the current examination scheme, the Office simply checks whether SOAs contain “obvious errors or omissions”—not to identify all possible deficiencies.³¹ It has never been the Office’s practice to compute totals in Space E and compare the result with Space K, or otherwise attempt to validate the information provided in those spaces. The variance explanation requirement, however, apparently envisions a role of the Office in calculating the proposed 10% variance that would go beyond checking for obvious errors and omissions.

For the same reasons, while the Office is considering adding an instruction to its SOAs generally explaining that Space E is intended to allow for a rough comparison with reported gross receipts, the Office tentatively concludes that it is not appropriate to adopt Program Suppliers’ related proposal to explicitly instruct remitters that the gross receipts reported in Space K should approximate the number of subscribers in each category identified in Space E, multiplied by the applicable rate.

2. Proposed Requirement To Provide More Detailed Reporting of Subscriber and Rate Information (Space E)

As noted above, Program Suppliers’ Petition proposed “greater congruity” between gross receipts and subscriber and rate information on SOAs. In response, the Office agrees that it may be advisable to update the subscriber and rate information required by Space E to provide private parties with more granular information to make a rough comparison with the gross receipts information provided in Space K, including by making use of the audit mechanism provided by the regulations.³² With the exception of one amendment to the regulatory usage of the word “converter,” which, as discussed below, is intended to be technical, these proposed changes are to

²³ Short Form SOA at 6, Space K; Long Form SOA at 7, Space K; *see also* 37 CFR 201.17(e)(6)–(7) (describing corresponding SOA requirements).

²⁴ Program Suppliers Comments at 6. Broadcast Music, Inc., The American Society of Composers, Authors and Publishers, Broadcast Music Inc., and SESAC, Inc. (collectively, “Music Claimants”) submitted their own comments in response to the NOI, stating that “as a general matter, [they] support MPAA’s comments and proposed revisions to the SOAs.” Music Claimants Comments at 2.

²⁵ Petition at 3; *see also* Program Suppliers Comments at 5–7.

²⁶ Program Suppliers Comments at 5–6, 8.

²⁷ NAB Comments at 1.

²⁸ ACA Comments at 5–6.

²⁹ NCTA Comments at 5.

³⁰ *Id.*

³¹ *See* 37 CFR 201.17(c)(2).

³² *Id.* § 201.16.

the Office's forms and not its regulations.

While the audit right established by STELA provides a mechanism for copyright owners to verify information provided by cable operators and ensure they are being accurately compensated for use of their intellectual property under the compulsory license, these audits are limited in various ways, including by accounting period, frequency, and scope of initial and expanded audits as proscribed in the Office's regulations.³³ These audits are not intended to substitute for accurate and complete information provided by cable operators on the SOAs; nor is there an expectation that every single SOA would be audited. Indeed, it is important for SOAs to provide meaningful information to facilitate copyright owners' determination of whether or not to initiate an audit. Accordingly, this section outlines proposed changes or clarifications to

reporting requirements in Space E concerning categories of service and other rate information.

Space E implements 37 CFR 201.17(e)(6), which requires remitters to provide "[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters."³⁴ The regulation further states that "[e]ach entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) . . . shall be considered one subscriber"³⁵ subject to charges by the cable system for the basic service of providing secondary transmissions. These requirements are intended to complement the regulatory definition of "gross receipts," which includes "the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which

include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees."³⁶

As depicted below, Space E currently requires cable operators to report their number of subscribers and corresponding rate, "broken down by categories of secondary transmission service" offered to subscribers.³⁷ As the form instructs, "[t]he information in Space E should cover all categories of secondary transmission service of the cable system, that is, the retransmission of television and radio broadcasts by your system to subscribers." This information is reported through "Block 1," which "lists the categories of secondary transmission service that cable systems most commonly provide to their subscribers," and "Block 2," which allows cable systems to add brief descriptions of additional categories for secondary transmission service that they offer to customers:

Block 1			Block 2		
Category of service	Number of subscribers	Rate	Category of service	Number of subscribers	Rate
Residential: • Service to first set • Service to additional set(s) • FM radio (if separate rate)					
Motel, hotel					
Commercial					
Converter: • Residential • Non-residential					

As the Petition suggested, and as the Licensing Division's examination of recently filed SOAs illustrates, there appear to be opportunities to improve the consistency and quality of information reported in Space E. Specifically, Program Suppliers noted that there currently is "scant information" about the tiers of service (e.g., basic, expanded, digital) offered by cable operators that contain broadcast signals.³⁸ Program Suppliers requested that the Office revise its SOAs to require a variety of information, including:

(1) Each tier of service they provide for a separate fee, noting which tiers contain broadcast signals, (2) the rates associated with each service tier, and whether the fees collected for each package are included or excluded from their gross receipts calculation, (3) the number of subscribers receiving each service tier, (4) the lowest tier of service including secondary broadcast transmissions that is available for

independent subscription, and (5) any tier of service or equipment for which purchase is required as a prerequisite to obtaining another tier of service.³⁹

In addition, the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, Women's National Basketball Association, and the National Collegiate Athletic Association (a group collectively referred to as "Joint Sports Claimants" or "JSC") expressed concerns that cable operators could limit the reporting of gross receipts to revenues derived solely from the lowest priced tier of service carrying broadcast signals and exclude revenues derived from higher priced tiers that also carry such signals.⁴⁰

While the Office does not endorse every proposal of the Petition, in light of the increased variation in rates offered by cable operators, the Office

agrees with revising Space E to require a somewhat more granular breakdown of the number of subscribers and rates charged for the various pertinent categories of service provided to subscribers. Remitters would be instructed to list the total number of subscribers for each category of service as well as the corresponding rate (or range of rates), and to mark "N/A" if they did not offer service in a given category. The Office hopes that these changes will make it easier for cable operators to more accurately report the number of subscribers for the various services they offer.

Specifically, the Office proposes to update the various bolded categories of service—currently listed in Block 1 of Space E as "Residential," "Motel, hotel," "Commercial," and "Converter." The Office proposes to replace these categories with the following: "Single-unit residential," "Multi-unit

³³ 17 U.S.C. 111(d)(6); 37 CFR 201.16.

³⁴ 37 CFR 201.17(e)(6)(i).

³⁵ *Id.* 201.17(e)(6)(iii)(B).

³⁶ *Id.* 201.17(e)(b)(i).

³⁷ Short Form SOA at 2, Space E; Long Form SOA at 2, Space E.

³⁸ Petition at 8 (citing 37 CFR 201.17(e)(7)).

³⁹ *Id.* at 9–10.

⁴⁰ JSC Comments at 2–3.

residential,” “Motel, hotel,” “Commercial,” “Other MDU,” and “Equipment.” In addition, the Office proposes to add additional space below each category for providers to provide a further breakdown that captures each relevant category of retransmission of television and radio broadcasts offered to subscribers. In doing so, the proposed rule would replace the existing categories of service listed under what is currently labeled “Residential”—“Service to first set,” “Service to additional set(s),” and “FM radio (if separate rate)” —with the more generic categories “basic service 1,” “service 2,” and “service 3.” In addition, the proposed rule would list these same categories underneath most of the additional types of subscribers (e.g., “motel, hotel,” or “commercial”). The category “equipment” would retain the current subcategories “residential” and “non-residential.” Remitters could add additional categories of service as relevant to their business in empty lines, currently labeled “Block 2” of Space E. The Office is also considering whether space should be provided for cable operators to briefly describe these additional services to reflect the specific offering (e.g., “expanded” or “sports and news bundle”). Finally, the Office proposes clarifying in its instructions that cable operators should separately list the number of subscribers and rate information for each cable service offered that contains any broadcast signals.

The proposal to break up the existing “Residential” category into single- and multi-unit sub-categories is intended to alleviate some discrepancy in reporting practices for residential multiple-dwelling units (“MDUs”), as noted in earlier stakeholder comments, as well as better organize the type of rate information provided. For example, in their Petition, Program Suppliers stated that while some cable operators report the “total subscriber counts” for each of the MDUs they serve (albeit in a manner that leaves it unclear how these numbers are derived), others report each MDU simply as one subscriber, while still others leave the lines relating to “motel, hotel” or “commercial” categories of service blank.⁴¹ Under the proposal here, the Office intends for remitters to report single-family homes and individual unit apartment or condominium subscribers on the “single-unit residential” space, and subscribers on behalf of an overall

apartment or condominium building on the “multi-unit residential” space. If an operator has a single contract for cable service on behalf of the residents or occupants of a multi-unit residential building, the operator should report that building served as one multi-unit residential subscriber, and the rate (or range of rates) the operator receives for cable service from those subscribers.⁴² In addition, the replacement of the term “converter” with “equipment” on the SOA forms and in the regulation is simply intended to modernize regulatory terminology. The Office seeks comment on these proposed changes, including whether it would be advisable to specifically add the category of “other MDU,” which could encompass subscriptions for non-commercial multi-dwelling units such as penitentiaries, churches, or schools, or whether it is sufficient to allow cable operators to add categories of service as needed in the blank section of Space E.

These proposed changes are also intended to recognize the increased variety in cable subscription rates by providing a flexible table to allow cable operators to report each category of service “for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters.”⁴³ For example, since the Petition was received, the cable marketplace has experimented with a variety of service offerings, ranging from tiers of packages offering over 400 channels to skinny bundles emphasizing family friendly or sports-related programming. Meanwhile, the Office recognizes that it is no longer commonplace for cable operators to charge additional fees for “service to additional sets” or “FM radio,” but any remitter who does offer these services for a separate fee could list them as a separate service.

In addition, for each service offered to a category of subscribers, the Office proposes to allow cable operators to report a range of rates that the cable operator actually charged on the last day of the accounting period.⁴⁴ This instruction is intended to address pricing variations, as well as concerns from NCTA that reporting each rate charged to MDU subscribers based on individual negotiations would be “enormously difficult, and would unfairly require operators to divulge competitively sensitive information.”⁴⁵

As noted above, cable operators could also add additional categories of services to report rates that correspond to different types of service. The Office invites comment on whether there should be a limit on the variance that may be reported for a single service, such as a requirement that the highest amount may be no more than 100% of the lowest amount in a range (e.g., a range of \$14.99–\$26.99 would be permissible, but not a range of \$24.00–\$78.00), and whether any variance limit should be higher for MDUs to reflect the more individualized nature of services offered.

Finally, the Office proposes that information regarding categories of service shall not be left blank.⁴⁶ If a cable operator does not serve a specific category, a “zero” or a “N/A” (not applicable) should be reported in the appropriate space. These revisions are intended to facilitate the review of cable SOAs.

Further, the Office intends to revise Space E’s instructions and its regulatory definition of “gross receipts” to specifically note that cable operators’ gross receipts must include revenue from subscription to non-broadcast tier(s) and/or from equipment sales or leases if they are required to obtain tiers with broadcast signals. If a tier or other service has no broadcast signals, and is not required to be purchased to obtain access to broadcast signals, it need not be reported in Space E. This addition does not represent a substantive change in policy, but is intended to provide more detailed guidance in furtherance of the Office’s current regulatory definition of “gross receipts.”⁴⁷ This change is also in accordance with *Cablevision v. MPAA*, which found this definition and the Office’s longstanding requirement that “revenues from all tiers other than pay cable and from all channels within each included tier must be included in gross receipts” to be reasonable.⁴⁸

In sum, by updating the pre-populated categories listed in Space E and requiring more detail regarding the categories of service offered (i.e., by breaking out currently-reported subscriptions into separate tiers of service and listing the per-tier rate or range of rates), the Office hopes to address concerns about the adequacy of reported information. At the same time, the Office does not propose to adopt every information category proposed by

⁴¹ Petition at 6–7 (citing Short Form SOA at 2, Space E; Long Form SOA at 2, Space E); see also 71 FR at 45750 (noting Program Suppliers’ concerns over Space E).

⁴² See 37 CFR 201.17(e)(6)(iii)(B) (listing a private home owner, apartment owner, apartment resident, motel owner as subscriber examples).

⁴³ *Id.* 201.17(e)(6)(i).

⁴⁴ See Petition at 7; Program Suppliers Reply Comments at 12–14.

⁴⁵ NCTA Comments at 6.

⁴⁶ See Program Suppliers Reply Comments at 12–14.

⁴⁷ See 37 CFR 201.17(b)(1).

⁴⁸ *Cablevision Sys. Dev. Co. v. Motion Picture Ass’n of Am., Inc.*, 836 F.2d 599, 602, 611 (D.C. Cir. 1988).

Program Suppliers, tentatively agreeing with NCTA and ACA that requiring filers to provide information on offerings that do not contain broadcast signals (or are not prerequisites to obtaining service containing any broadcast signals) would be inappropriate, as those tiers do not contribute to gross receipts.⁴⁹

3. Reporting of Bundled Services in Gross Receipts and Subscriber Rates (Spaces E and K)

For years, cable operators and other multichannel video programming distributors have marketed video, internet data, and voice services as a single bundle of communication products to subscribers for a set price. Bundling offers certain subscriber benefits, such as price discounts and a single monthly bill. While pricing models vary, subscribers generally pay less for a bundled package than if purchasing each service individually.

From time to time, the Office receives questions on how to report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services. The Office is considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service. The Office welcomes comments on how cable operators currently report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services, and whether the Office's regulations should be amended to provide more guidance.

B. Definition of Cable System

The Office proposes to amend the regulatory definition of "cable system" to reflect both the Copyright Office's longstanding position that such systems are limited to systems providing only localized retransmissions of limited availability, and the uniform case law holding that internet-based retransmission services are excluded from the section 111 compulsory license.⁵⁰

As the Ninth Circuit recently explained, Congress did not intend for section 111 "to service the entire secondary transmission community . . . without regard to the technological makeup of its members," and instead limited the cable license to a narrower

subset of providers that the statute defines in a "detailed, if arguably ambiguous, way."⁵¹

The Act requires a "cable system" to make secondary transmissions by "wires, cables, microwave, or other communications channels."⁵² As the Ninth Circuit recognized, when read in conjunction with the whole of section 111 and the rest of the Copyright Act, it is clear that Congress did not intend section 111 "to sweep in secondary transmission services with indifference to their technological profile."⁵³ As the Office has previously noted, "at the time Congress created the cable compulsory license, the FCC regulated the cable industry as a highly localized medium of limited availability, suggesting that Congress, cognizant of the FCC's regulations and the market realities, fashioned a compulsory license with a local rather than a national scope."⁵⁴ Indeed, the localized nature of the cable statutory license is reflected throughout section 111. For example, in defining "cable system," section 111 states that two or more systems operating from "one headend"⁵⁵ are considered a single system; the same section also makes references to "contiguous communities."⁵⁶ Thus, as the Ninth Circuit properly concluded, the Office's established understanding of the section 111 license "aligns with [section] 111's many instances of location-sensitive language."⁵⁷

Indeed, the overall operation of the section 111 license assumes cable systems operate as localized retransmission services. The royalty structure for the license is predicated upon determining whether the retransmission of television programming is "local" to or "distant" from the local service area of the primary transmitter of such programming.⁵⁸ Specifically, royalty rates for larger (*i.e.*, Long Form SOA) cable systems are calculated based on a value known as the "distant signal equivalent,"⁵⁹ which is calculated based on the type and number of

stations with "non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter of such programming.*"⁶⁰ The statute, in turn, defines "local service area" in precise geographic terms. For example, for low power stations, the statute itself defines the local service area in terms of a specific radius in miles around a transmitter site.⁶¹ Accordingly, for a cable station to accurately calculate royalties under the statutory license, it must know with some precision the locations to which the cable system has retransmitted a broadcast station's signal—and whether that retransmission was within or outside the local service area of that station. This is something that is possible with traditional, hard-wired cable systems and their equivalent, because of the localized nature of their retransmission services.

Other aspects of the statutory scheme similarly underscore the localized nature of the statutory license. As discussed in greater detail below, for purposes of categorizing cable systems for royalty purposes, the statute specifies that two or more cable systems constitute a single cable system for purposes of section 111 if they are under common ownership or control and "are located in the same or contiguous communities."⁶² Similarly, the Office's section 111 regulations require cable operators to report the communities served by each cable system (*i.e.*, the cities or towns).⁶³ Thus, determining what "community" a cable system serves requires knowing with some precision where retransmitted signals are being sent, which necessarily implies that a "cable system" is one that operates via a localized transmission system.⁶⁴

Consistent with this understanding of the overall legislative scheme, the Office in prior rulemakings has held a consistent view that a "cable system" under the meaning of section 111 must operate in an inherently localized retransmission medium. For instance, in 1992 and 1997, in the context of

⁵¹ *Id.* at 1009.

⁵² 17 U.S.C. 111(f)(3).

⁵³ *Aereo*, 851 F.3d at 1009.

⁵⁴ 62 FR 18705, 18707 (Apr. 17, 1997); *see also Aereo*, 851 F.3d at 1014 (quoting same).

⁵⁵ Under FCC regulations, a "principal headend" is defined as "(1) the headend, in the case of a cable system with a single headend or, (2) in the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade [the broadcast signal carriage requirements.]" 47 CFR 76.5(pp).

⁵⁶ 17 U.S.C. 111(f)(3).

⁵⁷ *Aereo*, 851 F.3d at 1013.

⁵⁸ *See* 17 U.S.C. 111(d)(1), (f)(4), (5).

⁵⁹ *See, e.g., id.* 111(d)(1)(B).

⁶⁰ *Id.* 111(f)(5)(i) (emphasis added).

⁶¹ *See* 17 U.S.C. 111(f)(4). Specifically, the statute defines the local service area for "low power stations" as comprising "the designated market area . . . that encompasses the community of license of such station," *plus* communities outside the designated market area that are either "wholly or partially within 35 miles of the transmitter site" or, in the case of stations located in larger metropolitan areas, "wholly or partially within 20 miles of such transmitter site." *Id.*; *see also id.* 122(j)(2)(C) (defining "designated market area").

⁶² *Id.* 111(f)(3).

⁶³ 37 CFR 201.17(e)(4).

⁶⁴ *Cf. Aereo*, 851 F.3d at 1013–14 (deferring to Copyright Office interpretation based on section 111's use of "location-sensitive language").

⁴⁹ *See* NCTA Comments at 7; ACA Comments at 7–8.

⁵⁰ *See, e.g., Fox Television Stations, Inc. v. Aereo*, 851 F.3d 1002, 1007 n.1 (9th Cir. 2017) (noting that seven other federal courts held that "Internet-based transmission services" did not qualify as a "cable system" under the Copyright Act).

rulemakings to determine whether satellite and wireless cable retransmission systems could qualify for the section 111 license, the Office concluded that the section 111 license “applies only to localized retransmission services,”⁶⁵ and that “a provider of broadcast signals [must] be an inherently localized transmission media of limited availability to qualify as a cable system.”⁶⁶ Applying this standard, the Office found that satellite carriers could not qualify as cable systems.⁶⁷ The Eleventh Circuit upheld the reasonableness of that determination.⁶⁸ Congress established the section 119 and 122 licenses to provide for a separate statutory licensing scheme for satellite carriers.⁶⁹ Thus, as the Ninth Circuit recently noted, “if Congress meant § 111 to sweep in secondary transmission services with indifference to their technological profile, then it was strange for Congress to have provided separate compulsory license provisions—§§ 119 and 122—for broadcast retransmissions by satellite carriers.”⁷⁰

Similarly, in policy reports and testimony before Congress, the Office consistently communicated its position that internet-based retransmission services are not “cable systems” under section 111.⁷¹ As explained in more

detail in those reports, the Office’s view was based on an understanding that, unlike other systems qualifying for the cable license, online streaming services are not closed, localized systems, and so are outside the statutory license. By contrast, in a 2008 policy report, the Office opined that video programming distribution systems using Internet Protocol technology, by virtue of the fact that they were inherently closed systems delivering content to a limited set of subscribers at their homes, could meet the definition of “cable system”⁷²

In sum, in light of the Office’s understanding of section 111, its longstanding policy views, and the uniform direction of case law, the Office proposes adding the following sentence to its regulatory definition of “cable system”: “A provider of broadcast signals must be an inherently localized and closed transmission system of limited availability to qualify as a cable system.”

C. Interpretation of Community and Reporting of Area Served (Space D)

1. Cable Headend Location

Section 111(f) of the Copyright Act states in relevant part that: “For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.”⁷³ Moreover, two cable systems operating from the same headend are considered to be one system for purposes of calculating the section 111 royalties “even if they are owned by different entities.”⁷⁴ Currently, a cable operator is required to identify on its SOA only the community or communities in which it operates and not the location of the headend(s) serving those communities.⁷⁵

In their Petition, Program Suppliers requested that the Office revise Space D of the SOA form to require cable operators to identify the location of each

headend and the specific communities served from that headend.⁷⁶ Program Suppliers stated that this information will help them determine whether cable operators are, in fact, complying with the section 111(f) requirement to treat all cable systems operating from a common headend as a single cable system and suggested that a headend identification requirement would not burden cable operators, as the FCC already requires them to maintain records of the location of principal headends.⁷⁷ As to which headend a cable operator should report where there are multiple headends, Program Suppliers stated that an operator should be required to identify the location of each headend that serves communities listed by its systems.⁷⁸ NAB concurred that including the specific location of headends would enhance the Office’s review of SOAs.⁷⁹

By contrast, NCTA remarked that if a single system uses more than one headend, it should make no difference to copyright owners which one is identified; in that instance, an operator has already determined that it operates a single system for copyright purposes.⁸⁰ ACA commented that if a Program Supplier has a legitimate question regarding the location of a headend, it can request clarification from that particular operator, and that Program Suppliers have employees and outside counsel devoted to precisely that type of activity.⁸¹

The Office tentatively concludes that it is not clear that artificial fragmentation by cable systems seeking to avoid paying a higher royalty rate (*i.e.*, a Long Form SOA cable system reporting as several Short Form cable systems) is currently a pressing concern, or that requiring the reporting of headend information would significantly help lessen this issue, compared to the additional burden imposed upon cable operators. Given the lack of a strong record demonstrating the need for this information, the Office declines to adopt

⁶⁵ 57 FR 3284–01, 3292 (Jan. 29, 1992) (codified at 37 CFR pt. 201).

⁶⁶ 62 FR 18705, 18707 (Apr. 17, 1997) (codified at 37 CFR pt. 201).

⁶⁷ 57 FR at 3292, 3296. In this 1992 rulemaking, the Copyright Office also concluded that “wireless” cable systems could not qualify as “cable systems” under section 111. *Id.* at 3293–95. Congress amended section 111 in 1992 to reverse that decision. Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477 (1994); 59 FR 67635 (Dec. 30, 2004). In doing so, however, Congress did not question the Copyright Office’s conclusion that the statute was limited to localized retransmission services. To the contrary, Congress recognized that such wireless cable systems would have to be treated the same as wired systems for purposes of calculating distant signal royalties under the statutory license. *See* S. Rep. No. 103–407 at 14 (1994); H.R. Rep. No. 103–703 at 19 (1994); *see generally* 62 FR at 18709 (discussing legislative history).

⁶⁸ *Satellite Broad. & Commc’ns Ass’n of Am. v. Oman*, 17 F.3d 344, 346–48 (11th Cir. 1994); *see also* 37 CFR 201.17(k) (1992) (“Satellite carriers, [and] satellite resale carriers . . . are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.”).

⁶⁹ Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477 (1994); 59 FR 67635 (Dec. 30, 2004).

⁷⁰ *Aereokiller*, 851 F.3d at 1009.

⁷¹ *See, e.g.*, Register of Copyrights, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* 97–99 (1997), <https://www.copyright.gov/reports/study.pdf>; *Copyrighted Webcast Programming on the Internet: Hearing Before the H. Subcomm. on Courts and Intell. Prop.*, 106th Cong. 5–6 (2000) (statement of Marybeth Peters, Register of Copyrights and Dir.,

U.S. Copyright Office); Register of Copyrights, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report* 193–94 (2008), <http://www.copyright.gov/reports/section109-final-report.pdf> (“Section 109 Report”); Register of Copyrights, *Satellite Home Viewer Extension and Localism Act Section 302 Report* 47–49 (2011), <https://www.copyright.gov/reports/section302-report.pdf>.

⁷² Section 109 Report at 197–99; *see also id.* at 200 (concluding that retransmission of broadcast signals to mobile devices should be outside statutory license).

⁷³ 17 U.S.C. 111(f)(3); *see also* 37 CFR 201.17(b)(2).

⁷⁴ Short Form SOA at ii; Long Form SOA at ii; *see also* 43 FR at 958.

⁷⁵ *See* 37 CFR 201.17(e)(4); Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

⁷⁶ Petition at 10–11.

⁷⁷ *See* Program Suppliers Comments at 12–13 (citing 47 CFR 76.1708, 76.1716). The Office notes that the FCC recently eliminated the requirement that cable operators maintain for public inspection the designation and location of the cable system’s principal headend. *In re Revisions to Public Inspection File Requirements—Broadcaster Correspondence File & Cable Principal Headend Location*, 32 FCC Rcd. 1565 (2017), https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-3A1.pdf.

⁷⁸ *Id.* at 13.

⁷⁹ NAB Comments at 1–2.

⁸⁰ NCTA Comments at 8.

⁸¹ ACA Comments at 11.

a headend-reporting requirement at this time.

2. County Information

The Office's regulations currently require a cable operator to report the name of the community or communities served by its cable system.⁸² Space D of the SOAs require a cable operator to identify the communities it serves, including by listing the "city or town" and "state" served.⁸³ The SOAs do not currently require identification of the county in which the given community is located, although some operators report counties on a voluntary basis.

In their Petition, Program Suppliers requested that the Office require cable operators to identify the county where each cable community is located, in addition to the city and state.⁸⁴ They commented that this information would help clarify whether a signal is local, distant, or partially distant (*i.e.*, distant to some subscribers but local to others) for section 111 purposes.⁸⁵ NCTA agreed that the absence of county designations has hampered legitimate efforts to review certain SOAs and did not object to modification of the SOA forms to require inclusion of county information in Space D.⁸⁶ Similarly, ACA stated that this requirement will impose minimal additional burdens and will facilitate review of SOAs by the Licensing Division.⁸⁷

Because the parties agreed that inclusion of the county on the SOA would be beneficial, the Office proposes that Space D should be revised to require "county" information, but seeks comment on whether this proposed change remains desirable to stakeholders. The Office concludes that regulatory change is not necessary to implement this update to the form.

3. Definition of "Community"

Under the Copyright Act and the Office's regulations, two or more cable systems constitute a single cable system for purposes of section 111 if, as relevant here, they are under common ownership or control and are located in the same or "contiguous communities."⁸⁸ Where common ownership of cable systems is established, defining the "community" served is important to determine whether two or more cable facilities operate in "contiguous communities,"

and whether those facilities should file as a single cable system, preventing artificial fragmentation of large cable systems into multiple smaller systems to avoid the higher royalty payments Form 3 cable systems pay under section 111.⁸⁹

The Office's regulations currently state that a cable system's "community," for purposes of section 111, is the same geographic area as that specified under the definition of "community unit" as defined in the FCC's rules and regulations.⁹⁰ FCC regulations define "community unit" as "[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)."⁹¹

Program Suppliers requested that the Office amend the regulatory definition of the term "community" so that a cable operator's "franchise area" should be the *de facto* regulatory boundary for defining cable communities instead of the FCC's community unit definition. In support, Program Suppliers noted that the FCC itself, in written opinions, has interpreted "community unit" to mean cable franchise areas.⁹² But while it may be true that the FCC has itself at times equated its regulatory definition of "community unit" with a given cable system's franchise area, that is, the political jurisdiction for which a local government body has granted it the right to provide cable television to its residents, the regulatory definition refers more broadly to a "distinct community" and the Petition itself suggests the FCC has not been uniform in that interpretation. In its NOI, the Office asked if there is a general pattern of disaggregation by cable operators to support a rule change, and if so, whether it would be reasonable to equate the term "community" with a cable operator's "franchise area."⁹³

In comments, NCTA suggested that the FCC community unit concept was part of a long-established cable copyright paradigm.⁹⁴ It explained that the cable industry's signal carriage obligations under current FCC rules, notably the syndicated exclusivity rules,

continue to depend on the community unit definition, and were necessary under the FCC's former distant signal rules for establishing whether a distant signal is permitted for copyright purposes. NCTA further stated that Program Suppliers offered no evidence that Congress intended franchise areas to play a decisive role in defining a single cable system for copyright purposes. NCTA noted that with the advent of statewide franchising in some states, the proposed rule change could result in the artificial joinder of systems that could be hundreds of miles apart and not interconnected in any way.⁹⁵ In reply comments, NAB agreed that the Copyright Office should continue to rely upon the FCC's regulatory definition of community unit, and suggested that a literal application of those rules would prevent artificial fragmentation by requiring cable operators to list all contiguous units that shared a franchise authority.⁹⁶

The Copyright Office tentatively concludes that the facts and the law do not support replacing the community unit definition with a franchise area definition. Moreover, since the receipt of the Petition, the Office has not noted a practice of fragmentation, and has learned that this issue may be of less interest to stakeholders. The Office invites public comments on whether this issue is still significant to stakeholders.

D. Grade B Contour (Parts 6 and 7)

Under the Copyright Act, the definition of "local service area of a primary transmitter" establishes the difference between "local" and "distant" signals and "therefore the line between signals which are subject to payment under the compulsory license [under section 111] and those that are not."⁹⁷ The shifting technologies used for television transmission, as reflected in STELA, have led the Copyright Office to question whether certain parts of its regulations and SOA forms should be modified or eliminated.

Specifically, the parts of the Long Form SOA which reference the "Grade B contour," an FCC construct used for many years in the context of analog television stations, appear to be obsolete. Section 111 imported this construct, as detailed in FCC rules and regulations, with respect to determining the local service area of certain signals.⁹⁸ Subsequently, with the advent

⁸² 37 CFR 201.17(e)(4).

⁸³ Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

⁸⁴ Petition at 11–13.

⁸⁵ *Id.* at 12.

⁸⁶ NCTA Comments at 9.

⁸⁷ ACA Comments at 4.

⁸⁸ 17 U.S.C. 111(f)(3); 37 CFR 201.17(b)(2).

⁸⁹ See 43 FR 958 (Jan. 5, 1978) ("[T]he legislative history of the Act indicates that the purpose of this sentence [in section 111(f)] is to avoid the artificial fragmentation of cable systems.").

⁹⁰ 37 CFR 201.17(e)(4); see also Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

⁹¹ 47 CFR 76.5(dd).

⁹² Petition at 16 (citation omitted).

⁹³ 71 FR at 45752.

⁹⁴ NCTA Comments at 11.

⁹⁵ *Id.* at 11–13.

⁹⁶ NAB Reply Comments at 12–13.

⁹⁷ H.R. Rep. No. 94–1476, at 99 (1976), as reprinted in 1976 U.S.C.A.N. 5659, 5714.

⁹⁸ 17 U.S.C. 111(f)(4).

of digital television signals, the FCC has recognized a new standard known as the “noise-limited service contour.” STELA amended section 111 by adding to the definition of “local service area” any area “within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations.”⁹⁹

Two parts of the form appear to have been overtaken by these technological developments. First, the Long Form SOA asks for certain information related to certain UHF signals within a Grade B contour, for purposes of calculating royalties paid under a 3.75% fee in Part 6, Block B of the form. Under the FCC’s old “market quota” rules, which were incorporated by reference into section 111, a cable operator could carry a certain number of distant signals based upon a complex scheme involving the type of the television market and the type of signal available. A cable operator, however, could carry more signals than its market quota of distant signals if the station was considered “permitted” by the FCC’s 1976-era rules. The concept of “permitted” stations has been imported into the section 111 license. Under section 111, an operator that carries a non-permitted signal above its market quota is generally subject to a 3.75% fee for carriage of that signal, in lieu of the minimum royalty rate.¹⁰⁰ There are several bases of “permitted” carriage, however, for which retransmission will not trigger the 3.75% fee. One of these bases—basis “G”—includes carriage of commercial UHF stations within a Grade B contour.¹⁰¹ On cable SOAs, permitted signals, including those under basis “G,” must be reported in Part 6, Block B, or be subject to the 3.75% fee calculation in Part 6/Block C.¹⁰²

The Office, in a 2008 Notice of Proposed Rulemaking concerning digital broadcast signals (“Digital Signals NPRM”) that pre-dated STELA,¹⁰³ made initial conclusions concerning the continued relevance of the “basis G” for the cable retransmission of digital television signals. With regard to commercial UHF stations placing a Grade B contour over a cable system, the

Office noted that the Grade B contour could not be replaced by the noise limited service contour as the appropriate measurement to determine whether a commercial UHF station is “permitted” for copyright purposes because the new contour parameters were not in use at the time Section 111 was enacted.¹⁰⁴

As noted, after the Digital Signals NPRM, STELA amended the definition of “local service area of a primary transmitter” in section 111 so that such area would include the area within the noise limited service contour.¹⁰⁵ This amendment confirms to the Office that the noise limited service contour is the proper standard by which to measure the reach of digital television signals with respect to the section 111 license, including digital UHF signals. And, as most relevant here, the amendment appears to render “basis G” obsolete as it currently exists. That is because, as stated above, royalty rates under the section 111 license are calculated based on the “secondary transmission of any non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter* of such programming.”¹⁰⁶ Any digital signals within the noise-limited service contour are “local” and thus are not subject to the section 111 royalty rate. Thus, it appears that there is no need to treat any station within the noise limited contour as “permitted,” because locally retransmitted stations do not count against the market quota in the first place.

To the extent that the “Grade B contour” construct theoretically may continue to apply to analog signals, the Office questions whether it has become obsolete as a practical matter. From running database queries on submitted SOAs, the Office has learned that permitted basis “G” in Part 6/Block B is rarely, if ever, used. Moreover, in the few cases where cable operators have reported the permitted basis of carriage category “G,” the Office believes the cable operators may have used the noise-limited contour (for digital signals) interchangeably with the Grade B contour (for analog signals) because they historically reported “G” in the all-analog world (prior to the mandated FCC digital conversion in 2009), and continue to report the “G” permitted basis out of habit. Accordingly, the Office proposes eliminating permitted basis “G” in Part 6/Block B on the cable

SOAs (*i.e.*, commercial UHF stations within a Grade B contour). The Office invites public comment on this proposal. The Office is particularly interested in learning whether cable operators still retransmit broadcast signals using analog signals, and if so, to what extent the permitted basis “G” is relevant to this carriage.

Second, the Grade B contour has, in the past, had relevance to other aspects of the statutory license under section 111, including the calculation of a “syndicated exclusivity surcharge.” Cable systems located in whole or in part within a major television market, as defined by FCC rules and regulations, must calculate a syndicated exclusivity surcharge for the carriage of any commercial VHF station that places a Grade B contour, in whole or in part, over the cable system that would have been subject to the FCC’s syndicated exclusivity rules in effect on June 24, 1981.¹⁰⁷ Cable operators report any syndicated exclusivity surcharge in Part 7, Block B of cable Long Form SOAs.

From running database queries on submitted SOAs, however, the Office has learned that the last time Part 7 of the cable SOA was used (*i.e.*, Computation of the Syndicated Exclusivity Charge) was in 2013, on a single SOA. Accordingly, the Office invites public comment on whether Part 7 of the cable SOA should be amended, and whether, more generally, the Office’s related regulations should be amended to remove references to a Grade B contour.

E. Changes to SOA Due to Copyright Royalty Board’s Proposed Rule Relating to the Retransmission of Sports Programming

In May 2017, the Copyright Royalty Board (“CRB”) issued a notice of proposed settlement and proposed rule to require covered cable systems to pay a separate per-teletext royalty (a “Sports Surcharge”) in addition to the other royalties that cable systems must pay under section 111.¹⁰⁸ In September, the CRB issued an additional notice concerning whether non-participants to the settlement could be eligible to receive royalties stemming from the Sports Charge, but did not otherwise alter its proposed rule.¹⁰⁹ Under the CRB’s proposed rule, the “Sports Surcharge would amount to 0.025 percent of the cable system’s ‘gross receipts’ during the relevant semi-annual accounting period for the secondary transmission of each affected

⁹⁹ STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

¹⁰⁰ See 37 CFR 387.2. All cable systems filing Long Form SOAs must pay at least the minimum fee which is 1.064% of gross receipts. The cable system pays either the minimum fee or the sum of the base rate fee and the 3.75% fee, whichever is larger, and a Syndicated Exclusivity Surcharge, as applicable. Long Form SOA at 10.

¹⁰¹ See Long Form SOA at 13.

¹⁰² See Long Form SOA at 13.

¹⁰³ See 73 FR 31399 (June 2, 2008). Because STELA confirmed the application of section 111 to digital broadcast signals, the Office considers the Digital Signals NPRM to be closed.

¹⁰⁴ *Id.* at 31408–409.

¹⁰⁵ See STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

¹⁰⁶ 17 U.S.C. 111(f)(5) (emphasis added).

¹⁰⁷ See 37 CFR 201.17(i)(1)(ii), (i)(2)(ii).

¹⁰⁸ 82 FR 24611 (May 30, 2017).

¹⁰⁹ 82 FR 44368 (Sept. 22, 2017).

broadcast of a sports event, provided that all of the conditions of the proposed rule are satisfied.”¹¹⁰ “Thus, if a covered cable system made a secondary transmission of one affected broadcast, it would pay 0.025 percent of ‘gross receipts’ during the relevant semi-annual accounting period for that transmission; if it made secondary transmissions of two affected broadcasts, it would pay 0.025 percent of ‘gross receipts’ during the relevant semi-annual accounting period for each of those transmissions (or a total of 0.050 percent of its ‘gross receipts’).”¹¹¹

Assuming the CRB’s rule is adopted, the Office intends to amend its cable SOA forms to account for the new Sports Surcharge for semi-annual accounting periods by adding a new Space R that would allow for calculations of this surcharge. No amendments to the Office’s regulations are needed to accommodate this change.

F. Interest Payments and Copyright Infringement Liability

The Office’s current regulations require cable operators to pay interest on late or underpaid royalty payments.¹¹² In their Petition, Program Suppliers asserted that such payments do not preclude copyright owners from bringing an action against cable operators for copyright infringement during the time period in which the cable operators’ royalty payments were not properly remitted, and requested that the Office amend its regulations and revise its SOA forms to include language clarifying that the assessment of interest does not absolve cable operators from copyright infringement liability for failure to make timely royalty payments.¹¹³ Cable associations disagreed, with ACA stating that “[s]ound policy supports maintaining the ability of a cable operator to correct an[y] SOA and pay additional royalties with interest, without the imminent threat of copyright infringement,” and that the ability to file amended or late SOAs with interest “provides an efficient means to correct good faith errors in filings[,] while at the same time providing copyright claimants with their full compensation plus interest.”¹¹⁴

The Office declines Program Suppliers’ suggestion to modify the SOA to state that a payment made after the due date does not bar an

infringement action against the cable operator. While section 111(d)(1)(A) directs the Register to issue regulations governing the filing of SOAs, including identification of all secondary retransmissions of broadcast stations, number of subscribers, and gross revenues paid to the cable system, it does not require the Office to determine the scope of liability for copyright infringement; in the Office’s view, this question is more properly reserved for the courts in appropriate cases.¹¹⁵

G. Removing Outdated References to the Satellite Television Extension and Localism Act

After Congress enacted STELA in 2010, the Office issued implementing regulations that, among other things, established the accounting period for which the new cable operator royalty fee rates would take effect.¹¹⁶ In the seven years since STELA was enacted, however, some references to STELA in the Office’s regulations appear to have become outdated and unnecessary. The Office understands that cable operators rarely file SOAs for periods dating back further than the last five years (*i.e.*, for periods prior to the enactment of STELA). Accordingly, the Office proposes amending section 201.17 by deleting outdated references to STELA, and adding language for remitters to contact the Licensing Division for instructions should they need to file SOAs for accounting periods further back than the last five years. The Office invites public comment on this proposal.

H. Technical Amendments

The Office’s current regulations provide a number of instructions to cable operators on how to complete SOAs, many of which duplicate the instructions on the SOA forms themselves.¹¹⁷ The Office proposes removing regulatory provisions that are duplicative of information provided on cable operator SOA forms and/or on the Office’s Web site.

In addition, the Office’s current regulations instruct which information must be provided as part of the electronic funds transfer (“EFT”) to pay royalty fees.¹¹⁸ The Office proposes removing this language from the regulations and incorporating it into the

instructions for the SOA forms themselves.

These changes are intended to improve the readability of existing regulations and do not represent substantive changes in policy.

III. Reporting Practices—Cable, Satellite and DART

The Office has identified a number of additional issues relating to cable SOA reporting practices, and finds it is administratively efficient to address these new cable reporting practice matters here rather than initiate a new proceeding. Because some of these issues are also pertinent to the filing of SOAs for other statutory licenses, the Office proposes to amend certain reporting rules for cable operators (under section 201.17), satellite carriers (under section 201.11) and digital audio recording equipment manufacturers and importers (under sections 201.27 and 201.28), where applicable, so that there are parallel requirements for all three licenses in the Office’s regulations. Each of the following proposed changes are reflected in the updated proposed regulatory language below.

A. Closing Out Statements of Account

During an initial examination of SOAs, the Office’s Licensing Division often makes inquiries of cable system operators regarding the information provided in the SOA.¹¹⁹ Generally, the Office does not make an entire SOA available to the public until the cable operator has responded to the Office’s inquiry and the initial examination process has been completed. But oftentimes, the Office may not receive a response to its inquiry until long after the Office’s letter or email. In some cases, replies are not received in the Office until years later. Currently, if this happens, the Office re-examines the original SOA in light of the request.

To streamline the administrative process and encourage timely responses to Office inquiries, the Office proposes to close out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence from the Office. After an SOA is closed, it would be placed with other publicly available SOA records. At that point, a cable operator wishing to submit a reply or pay additional royalties or make necessary corrections would need to file an amended SOA along with a filing fee as prescribed in 37 CFR 201.3(e). But, to

¹¹⁰ 82 FR at 24612.
¹¹¹ *Id.*
¹¹² See 37 CFR 201.17(k)(4); see also Short Form SOA at 8, Space Q; Long Form SOA at 9, Space Q.
¹¹³ Petition at 13.
¹¹⁴ ACA Comments at 12; see also NCTA Comments at 9.

¹¹⁵ There are two other provisions, aside from 17 U.S.C. 111(d)(1)(A), which require action by the Register in the cable statutory licensing context. These are the authority to set filing fees for SOAs under 17 U.S.C. 111(d)(1)(G) and the authority to issue audit regulations under 17 U.S.C. 111(d)(6).

¹¹⁶ 37 CFR 201.17(g)(4).

¹¹⁷ See *id.* 201.17(e)(1)–(4), (8), (10)–(13).

¹¹⁸ *Id.* 201.17(k)(1).

¹¹⁹ These inquiries generally seek missing or clarifying information pertaining to an element(s) of the SOA and might raise the possibility that there has been an underpayment or overpayment of the royalty fee.

be clear, operators failing to respond within the prescribed 90-day window would forfeit any potential refund of an overpayment associated with any issue with the SOA identified by the Office in its correspondence.

The Office tentatively concludes that 90 days is a reasonable timeframe for operators to reply to any issues arising from examination of an SOA and that the proposed amendments will facilitate the timely disposition of SOAs. The Office proposes harmonizing this practice across regulations affecting SOAs for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

B. Royalty Refunds

Because the administrative cost of issuing royalty refunds of less than \$50.00 can exceed the amount actually refunded, under the Office's proposed rule, refunds for amounts of \$50.00 or less will issue only where the refund is specifically requested before the SOA is closed and made available for public inspection. If a refund is not requested before the SOA is closed, the amount will be added to the relevant royalty pool. The proposed rule will harmonize this practice across regulations affecting royalty refunds for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

C. Payment of Supplemental Royalty Fees and Filing Fees by EFT

The Office proposes to amend its regulations to require payment of supplemental royalty fees and filing fees by EFT for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers, and eliminate the ability to pay by paper check or money order. Use of EFT has enhanced the efficiency of the Office's royalty collection process by avoiding problems associated with a paper check or money order (e.g., lost checks or delays in processing mail) and by lessening the Office's administrative workload.

D. Interest Assessment

Current regulations regarding the treatment of interest assessment for late payments or underpayments of royalties are similar, but not uniform, for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers. The Office proposes to harmonize these regulations so that interest begins accruing on the first day after the close of the period for filing SOAs for all underpayments or late payments of

royalties; the accrual period shall end on the date the payment submitted by the remitter is received by the Office; and the applicable interest rate shall be the Current Value of Funds Rate, established by section 8025.4 of the Treasury Finance Manual. In addition, interest payments shall not be required if the interest charge is less than \$5.00.

IV. Conclusion

The Copyright Office hereby seeks comment from the public on the amendments proposed in this Notice of Proposed Rulemaking.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

Proposed Regulations

For the reasons stated in the preamble, the Copyright Office proposes to amend 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.11 by:

- a. Revising paragraph (f)(1).
- b. Revising paragraph (h)(3)(iv).
- c. Adding paragraph (h)(3)(vii).
- d. Adding paragraphs (h)(5) and (h)(6).

The revisions and additions read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(f) * * *

(1) All royalty fees, including supplemental royalty payments, must be paid by a single electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Satellite carriers must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(h) * * *

(3) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount

of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (h)(3)(i) of this section.

* * * * *

(5) *Interest on late payments or underpayments.* Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing and viewing in commercial establishments occurring within that accounting period. The accrual period shall end on the date the full payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office Web site. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary,

ninety days from the date of the last correspondence from the Office.

■ 3. Amend § 201.17 by:

- a. Revising paragraphs (b)(1) and (2).
- b. Revising paragraph (c) introductory text and paragraph (c)(3).
- c. Adding paragraph (c)(5).
- d. Revising paragraph (d).
- e. Revising paragraph (e) introductory text.
- f. Removing paragraphs (e)(1) through (4), (e)(8), and (e)(10) through (13).
- g. Redesignating paragraph (e)(5) as (e)(1), paragraph (e)(6) as (e)(2), paragraph (e)(7) as (e)(3), paragraph (e)(9) as (e)(4), and paragraph (e)(14) as (e)(5).
- h. Removing ““Secondary Transmission Service: Subscribers and Rates,”” and adding in its place ““Secondary Transmission Service: Subscribers and Rates,”” in the newly redesignated paragraph (e)(2).
- i. Adding “or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations” after “Statement” in the newly redesignated paragraph (e)(2)(iii)(A).
- j. Revising newly redesignated paragraph (e)(2)(iii)(B).
- k. Adding paragraph (e)(2)(iii)(C).
- l. Removing ““Gross Receipts,”” and adding in its place ““Gross Receipts,”” in the newly redesignated paragraph (e)(3).
- m. Removing “Television,”” and adding in its place “Television,”” and removing “and required to be specially identified by paragraph (e)(11) of this section,” in the newly redesignated paragraph (e)(4) in the introductory text.
- n. Revising newly redesignated paragraph (e)(4)(iv).
- o. Removing paragraphs (g)(2) and (g)(4).
- p. Redesignating paragraph (g)(3) as paragraph (g)(2).
- q. Revising paragraph (k) introductory text and paragraph (k)(1).
- r. Removing “satellite carrier” and adding in its place “cable operator” in paragraph (k)(4).
- s. Revising paragraph (l)(1).
- t. Removing “(m)(4)” and adding in its place “(l)(4)” in paragraph (l)(2).
- u. Removing “, for any reason except that mentioned in paragraph (m)(2)(iii) of this section,” in paragraph (l)(2)(ii).
- v. Removing “(m)(2)” and adding in its place “(l)(2)” in paragraph (l)(4).
- w. Removing “(m)(2)(i)” and adding in its place “(l)(2)(i)” in paragraph (l)(4)(iii)(A).
- x. Removing “(m)(2)(ii)” and adding in its place “(l)(2)(ii)” in paragraph (l)(4)(iii)(B).
- y. Revising paragraph (l)(4)(iv).
- z. Removing “(m)” and adding in its place “(l)”, and removing “(e)(14)” and

adding in its place “(e)(5)” in paragraph (l)(4)(v).

- aa. Removing “(m)(4)(i)” and adding in its place “(l)(4)(i)” in paragraph (l)(4)(vi).
- bb. Adding paragraph (l)(4)(vii).
- cc. Redesignating paragraph (l)(5) as (l)(7).
- dd. Revising newly redesignated paragraph (l)(5).
- ee. Adding paragraph (l)(6).
- ff. Removing “(m)” and adding in its place “(l)” in newly redesignated paragraph (l)(7).

The revisions and additions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b) * * *

(1) Gross receipts for the “basic service of providing secondary transmissions of primary broadcast transmitters” include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals. Gross receipts also include fees for non-broadcast tier(s) of services if such purchase is required to obtain tiers of services with broadcast signals, and fees for any other type of equipment or device necessary to receive broadcast signals that is supplied by the cable operator. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided that, the origination services are not offered in combination with secondary transmission service for a single fee. In addition, gross receipts shall not include any fees collected from subscribers for the sale of Internet services or telephony services when such services are bundled together with cable service; instead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product.

(2) A *cable system* is a facility, located in any State, Territory, Trust Territory,

or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. A provider of broadcast signals must be an inherently localized and closed transmission system of limited availability to qualify as a cable system. A system that meets this definition is considered a “cable system” for copyright purposes, even if the FCC excludes it from being considered a “cable system” because of the number or nature of its subscribers or the nature of its secondary transmissions. The Statements of Account and royalty fees to be deposited under this section shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees. For these purposes, and the purpose of this section, an “individual” cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either:

- (i) In contiguous communities under common ownership or control or
- (ii) Operating from one headend.

* * * * *

(c) *Submission of Statement of Account, accounting periods, and deposit.*

* * * * *

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office except for cases where the cable system has ceased operation before the account period closes. Statements of Account and royalty fees received after the filing deadlines of July 30 or January 30, respectively, will be accepted for

whatever legal effect they may have, if any.

* * * * *

(5) A cable system that changes ownership during an accounting period is obligated to file only a single Statement of Account at the end of the accounting period. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Statement of Account forms and submission.* Cable systems should submit each Statement of Account using an appropriate form provided by the Copyright Office on its Web site and following the instructions for completion and submission provided on the Office's Web site or the form itself. To file a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

(e) *Contents.* In addition to the instructions for completion and submission provided on the Office's Web site or the form itself, each Statement of Account shall contain the following information:

* * * * *

(2) * * *

(iii) * * *

(A) The description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations; and

(B) Each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber. For short-stay multiple dwelling units (e.g., motel, hotels), the operator shall report each building served as one subscriber if the operator has a single agreement for cable service with the units' proprietor, landlord, or owner on behalf of the residents or occupants of the structure. If the operator does not serve any type of multiple dwelling unit, residential or commercial, or any hotel or motel, a "zero" or a "N/A" (for "not applicable") must be reported in the appropriate space on the statement of account form.

(C) A cable operator shall on its Statement of Account separately report, line by line, for both single and multiple dwelling unit buildings, the number of

subscribers served, gross receipts for the sale of each tier containing broadcast programming, any revenue derived from non-broadcast tier(s) of services if such purchase is required to obtain tiers of services with broadcast signals, and fees for any other type of equipment or device necessary to receive broadcast signals that is supplied by the cable operator. Information regarding multiple dwelling units shall not be left blank.

* * * * *

(4) * * *

(iv) A designation as to whether that primary transmitter is a "network station," an "independent station," or a "noncommercial educational station."

* * * * *

(k) *Royalty fee payment.* (1) All royalty fees, including supplemental royalty fees, must be paid by a single electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Cable systems must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(l) * * *

(1) To amend or request a refund relating to a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

* * * * *

(4) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the cable system

owner named in the Statement of Account.

* * * * *

(5) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office Web site. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

■ 4. Amend 201.28 by:

■ a. Revising paragraph (h)(1).

■ b. Revising paragraph (j)(3)(v).

■ c. Adding paragraph (j)(3)(viii)

■ d. Adding paragraphs (j)(4) and (j)(5).

The revisions and additions read as follows:

§ 201.28 Statement of Account for digital audio recording devices or media.

* * * * *

(h) * * *

(1) All royalty fees, including supplemental royalty fee payments, must be paid by a single electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Remitters must provide specific information as part of the EFT and as part of the remittance

advice, as listed in the instructions for the Statement of Account form.

* * * * *

(j) * * *

(3) * * *

(v) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(viii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the manufacturing or importing party named in the Statement of Account.

(4) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Manufacturers or importing parties wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office Web site. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting

period if the interest charge is less than or equal to five dollars (\$5.00).

(5) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2017-25487 Filed 11-30-17; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2002-0001; FRL-9971-31-Region 1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hatheway & Patterson Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is issuing a Notice of Intent to Delete the Hatheway & Patterson Superfund Site (Site) located in Mansfield and Foxborough, Massachusetts, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Massachusetts, through the Massachusetts Department of Environmental Protection (MassDEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by January 2, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2002-0001, by mail or email to: Kimberly White, Remedial Project Manager for Hatheway & Patterson

Superfund Site, Office of Site Remediation and Restoration, Mail Code: OSRR07-1, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, email: white.kimberly@epa.gov or Emily Bender, Community Involvement Coordinator, Office of the Regional Administrator, Mail Code: ORA01-3, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, email: bender.emily@epa.gov. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Kimberly White, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, MC: OSRR07-1 5 Post Office Sq., Boston, MA 02119, phone: (617) 918-1752, email: white.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Hatheway & Patterson Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757,

3 CFR, 1991 Comp., p. 351; E.O. 12580, 52
FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: October 18, 2017.

Deborah A. Szaro,

Acting Regional Administrator, Region 1.

[FR Doc. 2017-25936 Filed 11-30-17; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 82, No. 230

Friday, December 1, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 28, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are required regarding (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 2, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: County Committee Election.

OMB Control Number: 0560-0229.

Summary of Collection: As specified in the 2002 Farm Security and Rural Investment Act of 2002, the Secretary prepares a report of election that includes, among other things, "the race, ethnicity and gender of each nominee, as provided through the voluntary self-identification of each nominee". The information will be collected using form FSA-669-A and FSA-669A-2, "Nomination Form for County FSA Committee Election". Completion of the form is voluntary.

Need and Use of the Information: FSA will collect information on race, ethnicity and gender of each nominee as provided through the voluntary self-identification of each nominee agreeing to run for a position. The information will be sent to Kansas City for preparation of the upcoming election. The Secretary will review the information annually. If the information is not collected in any given year, the Secretary would not be able to prepare the report as required by the regulations.

Description of Respondents:

Individuals or households.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,700.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017-25944 Filed 11-30-17; 8:45 am]

BILLING CODE 3410-05-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the

Federal Advisory Committee Act (FACA) that a meeting of the Texas Advisory Committee (Committee) to the Commission will be held at 11:30 a.m. (Central Time) Thursday, December 7, 2017. The purpose of the meeting is for the Committee to begin planning for briefing on voting rights.

DATES: The meeting will be held on Thursday, December 7, 2017, at 11:30 a.m. CT.

Public Call Information:

Dial: 800-263-8506.

Conference ID: 3696022.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at afortes@usccr.gov or (213) 894-3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800-263-8506, conference ID number: 3696022. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894-0508, or emailed Ana Victoria Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (213) 894-3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://facadatabase.gov/committee/meetings.aspx?cid=276>. Please click on the "Meeting Details" and "Documents" links. Records

generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Discuss Potential Panelists
- III. Discuss Potential Panel Categories
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of the Committee needing to plan a briefing on voting rights to satisfy the U.S. Commission on Civil Rights' 2018 Statutory Enforcement report timeline.

Dated: November 27, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–25878 Filed 11–30–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Implementation of Revolving Loan Fund Risk Analysis System

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of proposed performance measures and request for comments.

SUMMARY: This notice outlines and solicits public comments on the performance measures that the Economic Development Administration (EDA) has selected to implement the Risk Analysis System to monitor the Revolving Loan Fund (RLF) Program. The Risk Analysis System, which is being implemented by concurrent changes to EDA regulations, is designed to lessen reporting and compliance burdens on RLF Recipients while providing for more efficient and effective oversight of the RLF Program. The Risk Analysis System measures are adapted from the Uniform Financial Institutions Rating System and evaluate RLF Recipients based on factors used by that system and data provided by RLF Recipients via the standard RLF Financial Report, Form ED–209. This notice seeks public comment on the

measures EDA will use to assess performance under the Risk Analysis System.

DATES: Written comments are due on or before January 2, 2018.

ADDRESSES: Comments on the notice may be submitted through any of the following methods:

- **Email:** regulations@eda.gov.

Include “Comments on EDA Notice” and “Implementation of Revolving Loan Fund Risk Analysis System” in the subject line of the message.

- **Fax:** (202) 482–5671. Please indicate “Attention: Office of the Chief Counsel,” “Comments on EDA Notice,” and “Implementation of Revolving Loan Fund Risk Analysis System” on the cover page.

- **Mail:** Ryan Servais, Attorney Advisor, Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230. Please indicate “Comments on EDA Notice” and “Implementation of Revolving Loan Fund Risk Analysis System” on the envelope.

FOR FURTHER INFORMATION CONTACT: Mitchell Harrison, Program Analyst, Performance and National Programs Division, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Mail Stop 71030, Washington, DC 20230 or via email at mharrison@eda.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

Investments to capitalize or recapitalize RLFs are governed by, *inter alia*, the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. 3121 *et seq.*), the regulations outlined at 13 CFR part 307, subpart B, and the EDA RLF Standard Terms and Conditions attached to RLF grant awards. The purpose of RLF grants is to provide regions with a flexible and continuing source of capital, to be used with other economic development tools, for creating and retaining jobs and inducing private investment that will contribute to long-term economic stability and growth. RLF grants are awarded to States, regional development organizations, local governments, Indian tribes, and non-profit organizations.

Currently, EDA applies a limited compliance-based approach to determine whether RLF Recipients adhere to regulatory requirements and fulfill the terms of RLF awards. RLF Recipients found to be non-compliant are subject to possible corrective action

plans (CAPs), sequestration, and termination.

As part of its most recent amendment to the regulations implementing PWEDA, which are effectuated through a Final Rule published contemporaneously with this notice,¹ EDA revised its RLF regulations to reflect best practices within the financial community and to strengthen EDA's efforts to evaluate, monitor, and improve RLF performance by moving to a risk-based approach to assess individual RLFs. This new approach, known as the Risk Analysis System, is modeled on the Uniform Financial Institutions Rating System, commonly known as the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity (CAMELS) rating system, which has been used since 1979 by a number of Federal agencies to assess financial institutions on a uniform basis and to identify those in need of additional oversight. The CAMELS system produces a composite rating by examining six components: Capital adequacy, asset quality, management capability, earnings, liquidity, and sensitivity to market risk. The Risk Analysis System uses a set of metrics that generally examine these same components. However, because of the unique goal of the RLF Program as a driver of critical economic development, particularly within distressed communities, EDA has developed a modified approach. In addition to assessing RLF Recipients based on metrics for capital adequacy, asset quality, management capability, earnings, and liquidity, EDA will consider metrics examining strategic results, rather than sensitivity to market risk.

EDA's newly revised regulations include key changes to support this shift to the Risk Analysis System and to ease the transition for RLF Recipients. These changes include the following:

- Replacing the formerly employed Capital Utilization Standard with the new Allowable Cash Percentage (ACP). In the current version of the RLF regulation at 13 CFR 307.16(c), the Capital Utilization Standard was applicable during the revolving phase of an RLF and required RLF Recipients to “provide that at all times at least 75 percent of the RLF Capital is loaned or

¹ The Department notes that the President's Fiscal Year 2018 Budget calls for the elimination of EDA. The Department considers the Final Rule amending the PWEDA implementing regulations to be important because the Department would need to continue to administer and monitor RLF grants in perpetuity under current statutory authorities. The regulatory changes in the Final Rule will enable the Department to more efficiently manage the residual RLF portfolio going forward.

committed. . . .” The new ACP standard is defined as “the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office’s portfolio of RLF Grants over the previous year.” This will be defined annually by each EDA regional office for that region’s RLF grants based on the previous year’s average percentage of RLF Cash Available for Lending (*i.e.*, funds not currently deployed or committed for new loans) held by the region’s portfolio of RLFs. The adoption of the ACP also removes the requirement for automatic sequestration. Under EDA’s previous sequestration policy, EDA could require sequestration if an RLF Recipient failed to satisfy the Capital Utilization Standard for two consecutive Reporting Periods, and EDA generally required sequestration after four consecutive Reporting Periods. Instead, under the revised regulations, if an RLF’s Cash Available for Lending as a percentage of the RLF Capital Base reaches 50%, and persists for two years, the RLF may be subject to a disallowance of the excess cash.

- Changing the Reporting Period to align with each RLF Recipient’s fiscal year end in order to ensure consistency between RLF financial reports (Form ED–209) submitted to EDA and RLF Recipient annual audit reports. Additionally, EDA revised the regulations to state that the reporting frequency for an RLF Recipient will be determined by EDA. This enables EDA to base reporting frequency on the risk assessment of the RLF Recipient. Those RLF Recipients with a high rating through the Risk Analysis System will be placed on an annual reporting cycle, while RLF Recipients receiving lower ratings will be required to maintain semi-annual reporting.

- Adopting a more tailored approach to remedying non-compliance. The Risk Analysis System will enable EDA to provide targeted assistance to RLF Recipients with identified weaknesses. By reviewing the Recipient’s score under the Risk Analysis System, EDA will be able to select from a list of options for intervening with the Recipient to achieve compliance, rather than applying the previous one-size-fits-all approach through sequestration or termination.

II. How EDA’s Risk Analysis System Works

The Risk Analysis System rates each RLF according to the performance metrics of the modified CAMELS approach using the data reported by the RLF Recipient through the standard RLF

financial report (Form ED–209), audits, and other submissions. Specifically, it uses fifteen defined measures to evaluate a Recipient’s administration of each RLF’s capital, assets, management, earnings, liquidity, and strategic results. This approach provides EDA with an internal tool for assessing the strengths and weaknesses of each RLF and for identifying RLFs that require additional monitoring, technical assistance, or other corrective action. It also provides RLF Recipients with a set of portfolio management and operational standards to evaluate their RLFs and improve performance. EDA believes this new Risk Analysis System will provide greater flexibility by assessing each RLF’s strengths and weaknesses under their own specific and unique circumstances, and that information will be used by EDA to prioritize and focus EDA resources to those RLFs with substantial challenges.

The Risk Analysis System rating will be conducted by EDA annually at the RLF Recipient’s fiscal year end and will be based on audits, RLF financial reports (Form ED–209, or a successor electronic system), and other submissions. EDA is revising Form ED–209 to streamline reporting by seeking only information essential to oversight and to make the report more effective by better integrating the Form with other information required from RLF Recipients. This revision of the ED–209 is occurring at the same time that EDA is soliciting public comment on the Risk Analysis System performance measures through this notice, and EDA will publish a notice seeking comments on the revised Form.

Because the Risk Analysis System relies heavily on audit results, all RLF Recipients will be required to submit independent audits. A single audit conducted according to 2 CFR part 200, subpart F, the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” and the compliance supplement thereto, will satisfy this requirement. Those Recipients that are not required to arrange for a single audit because they expend less than \$750,000 in Federal awards annually will be required to submit to EDA an independent audit of the RLF grant in the first year of the Risk Analysis System and as directed by EDA thereafter. RLF Income may be used to pay for such an independent audit of the RLF grant. If an RLF Recipient has insufficient RLF Income to pay for such an audit, the Recipient should seek EDA approval to use RLF Capital Base funds to cover audit costs.

III. Scoring the Metrics

The Risk Analysis System adapts the CAMELS performance metrics to assess RLFs through fifteen performance measures explained in the table below. Each of the measures will be scored on a numerical scale ranging from 3 to 1, where a “3” indicates exceeding the measure, a “2” indicates an acceptable effort, and a “1” indicates a below par performance for the indicated measure. The aggregate score will determine the RLF’s risk rating as “A”, “B”, or “C”, with each of the fifteen individual measures weighted equally. EDA will establish criteria for rating RLFs as “A”, “B”, or “C” using data from the first set of reports and audits submitted after implementation of the Risk Analysis System. EDA aims to establish fixed rating criteria such that RLFs are rated against established criteria rather than in relation to the performance of other RLFs; however, EDA may change the rating criteria from time to time.

1. *Capital*: The RLF Capital Base is expected to be maintained, if not increased, over time in order to sustain lending activity and to carry out the purposes of the RLF Program, to create and/or retain jobs, and stimulate private investment in regions of economic distress. In addition, sufficient capital is necessary to protect the RLF from potential loan losses. The “capital base index” measure is determined by dividing the current RLF Capital Base by the original RLF Capital Base at the time that the RLF was established.

2. *Assets*: An RLF Recipient must adhere to prudent lending standards to safeguard the quality of the loan portfolio. There are four measures within this metric: (1) The “default rate” measure assesses weakness in loan payments or loan servicing processes. It is measured as the RLF Principal Outstanding for Loans in Default as a percentage of the RLF Principal Outstanding for Active Loans. EDA considers a high default rate as 20% or greater. (2) EDA will also measure “default rate over time” by looking at how long a high default rate has persisted to identify possible weaknesses in underwriting, enforcement of loan terms, and/or working with borrowers to modify loan payment schedules with the goal of achieving full repayment. (3) The “loan write-off ratio” measures the number of written off loans compared to the number of inactive loans (the number of inactive loans is equal to the number of total outstanding loans minus the number of active loans). It will be used to identify weaknesses in loan underwriting and loan management. (4)

“Dollars written off” will identify the financial impact of loan losses by comparing the amount of loan losses to the amount of principal repaid.

3. **Management:** In order to increase the likelihood of a successful RLF, the RLF Recipient should have experience managing lending programs to be able to satisfy program, audit, RLF Plan, and reporting requirements. There are five measures to assess the Management metric: (1) The “financial control” measure is scored based on audit results and audit findings. RLF Recipients subject to the single audit requirement pursuant to 2 CFR part 200, subpart F, must demonstrate through an independent annual audit that financial controls are in place to operate the organization and the RLF according to Generally Accepted Accounting Principles, account for RLF assets, secure the use of funds, and value the RLF correctly in the audit’s Schedule of Expenditures of Federal Awards. As discussed in Section II, “How EDA’s Risk Analysis System Works,” RLF Recipients not subject to the single audit requirement must submit to EDA an independent audit of the RLF grant in the first year of the Risk Analysis System and as directed by EDA thereafter. (2) “Tenure” assesses the RLF Recipient’s collective experience with the EDA RLF Program. Managing an RLF requires specialized knowledge and experience. The roles critical for a successful lending program include: Executive Director, Lending Director, Finance Director, and Reporting Official. Vacancies or inexperience in any of these positions can lead to program neglect, weak loan generation, accounting problems, and late reporting. (3) The measure, “RLF Plan,” assesses whether the RLF Recipient is operating the RLF pursuant to a current, EDA-approved RLF Plan. (4) The “financial

report” measure assesses the timeliness and accuracy of RLF reporting through the standard RLF Financial Report, Form ED–209. (5) “Timely reporting” assesses the RLF Recipient’s timeliness in submitting audits and filings, plus any additional required reporting, such as that provided pursuant to a CAP or Federal Financial Reports (Form SF–425) for RLFs in the Disbursement Phase. Similarly, when an RLF is required to prepare and implement a CAP, the timeliness to resolve the issue(s) meriting corrective action will be assessed in this measure.

4. **Earnings:** An RLF Recipient is expected to manage costs and generate net income in order to maintain, if not increase, the RLF Capital Base. The “net RLF income” measure determines how well a Recipient is managing costs and generating net income by dividing the portion of RLF Income used for administrative expenses over the life of the RLF by total RLF Income, to determine the cumulative percentage of RLF Income used for administrative expenses.

5. **Liquidity:** RLF Recipients are expected to maintain a robust lending pipeline and cash available for lending within a range of the ACP. The ACP is a new feature of the RLF Program established by the newly revised regulations, and replaces the fixed capital utilization standard that ranged from 75% to 85%, according to the size of the RLF Capital Base. The ACP is a floating rate, determined annually for each EDA region. It is the region’s average RLF Cash Available for Lending as a percentage of the Capital Base calculated from the previous year’s reports for each EDA regional office portfolio. It specifies that RLF Cash Available for Lending excludes loans that have been committed or approved but have not yet been funded. Two

measures are used to determine liquidity in an effort to identify weaknesses in loan generation: (1) “Cash percentage” assesses the Recipient’s RLF Cash Available for Lending as a percentage of its RLF Capital Base compared to the ACP for the Recipient’s region; and (2) “cash percentage over time,” which assesses the length of time during which the Recipient’s cash percentage exceeded the Region’s ACP. For example, where the applicable ACP is 30%, RLFs that report an RLF Cash Available for Lending from 27% to 33% of its RLF Capital Base are scored as a 2 for the Cash Percentage measure. An RLF with the same ACP that holds 22% is scored as a 3, while an RLF with 40% is scored as a 1 for this measure.

6. **Strategic Results:** RLFs must engage in lending designed to fulfill the goals of the RLF Program. The Strategic Results component assesses whether RLFs are meeting those goals by determining the economic impact the RLF is having in its region. It does this by looking at two measures: (1) “cost per job” and (2) “leverage ratio”. “Cost per job” compares the RLF total portfolio performance to the target identified in its RLF Plan. It is based on the amount of dollars loaned divided by the total number of jobs created and saved. The “leverage ratio” compares the amount of leveraged capital across the entire RLF portfolio to the cumulative amount of RLF dollars loaned. EDA regulations require a minimum leverage ratio of two dollars of additional investment for every one dollar of RLF funds loaned. EDA regulations define leverage requirements, including investment by the borrower and other public loan programs.

The following chart demonstrates the range of scores available for each metric.

PERFORMANCE METRICS & MEASURES

	Score		
These metrics are calculated using information from the revised RLF Financial Report, Form ED–209. Where applicable, the measure’s formula is presented using references to lines in the revised ED–209. Note that EDA will publish a notice seeking comments on the revised Form.	3	2	1.
Performance Metric: Capital			
<i>The RLF Capital Base is expected to increase over time in order to sustain lending activity and to carry out the purpose of the RLF Program. In addition, sufficient capital is necessary to protect the RLF from potential loan losses.</i>			
Measure: Capital Base Index			
Determined by: RLF Capital Base divided by the original RLF Capital Base at the time the RLF was established. ED–209: II.C.6 ÷ II.A.3.	Greater than 1.5	From 1.0 to 1.5	Less than 1.0.

PERFORMANCE METRICS & MEASURES—Continued

	Score
Performance Metric: Assets	
<i>An RLF Recipient must adhere to prudent lending standards to safeguard the quality of the loan portfolio.</i>	
Measure: Default Rate	
<i>Determined by:</i> RLF Principal Outstanding for Loans in Default divided by RLF Principal Outstanding for Total Active Loans. <i>ED-209: III.A.3, In Default RLF Principal Outstanding ÷ III.A.4, Active RLF Principal Outstanding.</i>	Less than 10% From 10% to 20% Greater than 20%.
Measure: Default Rate over Time	
<i>Determined by:</i> Number of consecutive months where default rate is over 20%.	Less than 12 months From 12 to 24 months More than 24 months.
Measure: Loan Write-Off Ratio	
<i>Determined by:</i> The ratio of the number of loans written-off to the number of "inactive loans" (calculated as number of total loans minus number of active loans). <i>ED-209: III.A.5, Number ÷ (III.A.7, Number—III.A.4, Number).</i>	Less than 1 out of every 6 From 1 out of every 6 to 1 out of every 4. Greater than 1 out of every 4.
Measure: Dollars Written-Off	
<i>Determined by:</i> Loan Losses divided by the difference between Total RLF Dollars Loaned and Total RLF Principal Outstanding. <i>ED-209: III.A.5, Loan Losses ÷ (III.A.7, RLF \$ Loaned—III.A.7, RLF Principal Outstanding).</i>	Less than 10% From 10% to 20% Greater than 20%.
Performance Metric: Management	
<i>It is critical to the success of the RLF that Management is experienced with the EDA RLF Program, their RLF Plan, and reporting requirements. Critical positions include: Executive Director, Lending Director, Finance Director, and Reporting Official. Vacancies in any of these positions can lead to program neglect and result in late reporting, weak loan generation, and accounting errors.</i>	
Measure: Financial Control	
<i>Determined by:</i> Number and magnitude of audit findings	No findings Minor findings Material findings pertaining to Organization, Questioned Costs, Solvency, Interrelated party transactions.
Measure: Tenure	
<i>Determined by:</i> Shortest tenure of Executive Director, Lending Director, Finance Director, and Reporting Official.	Greater than 3 years From 2 to 3 years Vacancy or less than 2 years.
Measure: RLF Plan	
<i>Determined by:</i> Updated RLF Plan where EDA has not granted a time extension.	RLF Plan up to date, updates submitted at least every 5 years. Updated RLF Plan received more than 5 years since its last update but within 6 years. RLF Plan expired and not updated within the last 6 years.
Measure: Financial Reporting	
<i>Determined by:</i> Date RLF Financial Report, ED-209 submitted to EDA.	On time with no corrections needed. Up to 60 days late and/or returned to RLF Recipient for minor corrections. More than 60 days late; or sent back for major revision.
Measure: Timely and Complete Reporting	
<i>Determined by:</i> Date audit and/or additional reports (such as SF-425 or Corrective Action Plan) submitted to EDA.	On time Up to 30 days late Over 30 days late or no receipt.
Performance Metric: Earnings	
<i>An RLF Recipient is expected to manage costs and generate income in order to increase the RLF's Capital Base.</i>	
Measure: Net RLF Income	
<i>Determined by:</i> Portion of RLF Income Used for Administrative Expenses divided by Total RLF Income. <i>ED-209: II.B.7 ÷ II.B.6.</i>	Less than 50% From 50% to 100% More than 100%.
Performance Metric: Liquidity	
<i>RLF Recipients are expected to keep a robust lending pipeline and maintain cash within a range of the Region's average cash as a percentage of the Capital Base.</i>	
Measure: Cash Percentage	
<i>Determined by:</i> RLF Cash Available for Lending divided by RLF Capital Base. <i>ED-209: II.D.4 ÷ II.C.6.</i>	Less than 90% of the ACP From 90% to 110% of the ACP More than 110% of the ACP.

PERFORMANCE METRICS & MEASURES—Continued

	Score		
Measure: Cash Percentage over Time			
Determined by: Length of time where the Cash Percentage exceeds the Region's ACP.	Less than 12 months	From 12 to 24 months	More than 24 months.
Performance Metric: Strategic Results			
The purpose of the RLF Program is to provide regions with a flexible and continuing source of capital for creating and retaining jobs and inducing private investment that will contribute to long-term economic stability and growth.			
Measure: Cost per Job			
Determined by: RLF Dollars Loaned divided by Total Jobs compared to RLF Plan Target. ED-209: III.A.7, RLF \$ Loaned ÷ IV.E.5, Total Loans as compared to IV.E.6, RLF Plan Target.	Less than 90% of RLF Plan target.	90% to 110% of RLF Plan target.	Greater than 110% of RLF Plan target.
Measure: Leverage Ratio			
Determined by: Total Dollars Leveraged divided by RLF Dollars Loaned. ED-209: IV.E.1, Total Loans ÷ III.A.7, RLF \$ Loaned.	Meets or exceeds required leverage of 2:1.	N/A	Less than 2:1.

IV. Ratings and Remedies for Noncompliance

Following receipt of an RLF Recipient's fiscal-year end RLF financial report, the EDA RLF Administrator will notify the RLF Recipient of the performance rating, *i.e.*, Risk Analysis rating level (A, B, or C) for each RLF. The assigned level will be based upon the data and information provided in the most recent RLF financial report, the Recipient's overall numeric score on the Risk Analysis System, and a determination by the Regional RLF Administrator in consultation with the Grants Officer. Risk Levels A, B, and C are defined below:

1. *Level A:* RLF Recipients in Level A are managing their RLF award soundly and are almost always in compliance with EDA policies and regulations. These RLF Recipients exhibit the strongest performance and management practices. Any issues that arise are addressed in a timely manner. The RLF Administrator may determine that a Level A Recipient requires less frequent monitoring. These Recipients may be allowed to administer their RLF portfolios and resolve issues without significant EDA involvement. Level A Recipients will report to EDA on an annual basis within 90 calendar days following the end of their fiscal year.

2. *Level B:* RLF Recipients in Level B are fundamentally sound, but some deficiencies are present and will take time to resolve. Recipients are generally in compliance with EDA regulations and policies. While these RLF Recipients exhibit generally satisfactory results, the RLF Administrator will provide additional oversight and attention to assist the RLF Recipient with improving its performance. Level B Recipients will report to EDA on a semi-annual basis within 30 calendar days

following the end of their fiscal year and again within 30 calendar days of the end of the second quarter of their fiscal year.

3. *Level C:* RLF Recipients in Level C exhibit performance deficiencies requiring additional oversight and intervention by the RLF Administrator. In general, multiple measures on the Risk Analysis System measures are scored as a "1". Recipients may exhibit material noncompliance with EDA policies and regulations, which may result in the RLF Administrator having to propose formal enforcement actions, including suspension, corrective actions, termination, or transfer of the RLF Award. Level C Recipients will report to EDA on a semi-annual basis within 30 calendar days following the end of their fiscal year and again 6 months later.

For each RLF rated at Level C, the RLF Recipient will be required to produce a CAP to address the areas of weakness, which will include, at a minimum, an annual corrective action update report to EDA. The RLF Recipient will have 60 days, running from the day that the RLF Recipient receives notification from EDA of its risk-analysis score, to propose its CAP. The RLF Recipient will have a specified timeframe to implement the CAP, not to exceed three years, which will run from the day that the RLF Recipient receives notification from EDA that EDA concurs with the RLF Recipient's proposed CAP. (*Note:* The exception to the three-year limit is for an RLF Recipient that has proposed to rebuild its capital base, in which case they may have up to five years to reach the target.) The CAP must include measurable targets and dates by which improvement will be achieved. The RLF Recipient's CAP must be approved in writing by the EDA RLF Administrator, who will monitor the

RLF Recipient for incremental progress made.

If any Recipient is unable or unwilling to develop and submit a CAP or an annual update report, the RLF Administrator will inform the non-compliant Recipient that EDA may seek to terminate or transfer the RLF award. In addition, if a CAP for a Level C Recipient does not yield the intended results, the RLF Administrator may propose termination or transfer of the RLF award in consultation with the Grants Officer.

V. Public Input and Future Changes to the Risk Analysis System

EDA has created this transparent and flexible approach to better evaluate and monitor the performance of RLFs. In an effort to ensure that the Risk Analysis System is as effective as possible, EDA seeks feedback from the public on the Risk Analysis System as described in this notice, on the initial measures used to implement the System, and how those measures are assessed by EDA. EDA encourages RLF Recipients and all interested members of the public to send EDA questions, suggestions, and comments on the Risk Analysis System and the measures through any of the methods discussed in the **ADDRESSES** section of this notice. In order to further facilitate public comment, EDA will hold a public webinar to present and explain the Risk Analysis System and the proposed measures, as well as to answer questions. EDA will post webinar details on the RLF page of the EDA Web site at www.eda.gov/rlf. EDA will thoroughly consider all public input prior to finalizing the measures and will post the final guidance on the EDA Web site.

* * * * *

Authority: The Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. 3121 *et seq.*).

Dated: November 15, 2017.

Dennis Alvord,

Deputy Assistant Secretary for Regional Affairs, performing the non-exclusive duties of the Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2017-25276 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-WH-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority; First Responder Network Authority Combined Committee and Board Meeting

AGENCY: First Responder Network Authority ("FirstNet"), U.S. Department of Commerce.

ACTION: Notice of open public meetings.

SUMMARY: The Board of the First Responder Network Authority ("FirstNet Board") will convene a meeting of the FirstNet Board and the Committees of the Board of the First Responder Network Authority "Board Committees" that will be open to the public via teleconference and WebEx on December 7, 2017.

DATES: A combined meeting of the Board Committees and the FirstNet Board will be held on December 7, 2017, between 9:00 a.m. and 11:30 a.m., Eastern Standard Time (EST). The meeting of the FirstNet Board and the Governance and Personnel, Technology, Consultation and Outreach, and Finance Committees will be open to the public via teleconference and WebEx only from 9:00 a.m. to 11:30 a.m. EST.

ADDRESSES: The combined meeting of the FirstNet Board and Board Committees will be conducted via teleconference and WebEx only. Members of the public may listen to the meeting by dialing toll free 1-888-566-5786 and using passcode 5957846. To view the slide presentation, the public may visit the URL: <https://www.mymeetings.com/nc/join/> and enter Conference Number PWXW5929049 and audience passcode 5957846. Alternatively, members of the public may view the slide presentation by directly visiting the URL: <https://www.mymeetings.com/nc/join.php?i=PWXW5929049&p=5957846&t=c>.

FOR FURTHER INFORMATION CONTACT: Karen Miller-Kuwana, Board Secretary, FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone:

(571) 665-6177; email: Karen.Miller-Kuwana@firstnet.gov. Please direct media inquiries to Ryan Oremland at (571) 665-6186.

SUPPLEMENTARY INFORMATION: This notice informs the public that the FirstNet Board and Board Committees will convene a combined meeting open to the public via teleconference and WebEx only on December 7, 2017.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401 *et seq.*) ("the Act") established FirstNet as an independent authority within the National Telecommunications and Information Administration that is headed by a Board. The Act directs FirstNet to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters To Be Considered: FirstNet will post a detailed agenda for the combined meeting of the Board Committees and FirstNet Board meeting on its Web site, <http://www.firstnet.gov>, prior to the meetings. The agenda topics are subject to change. Please note that the subjects that will be discussed by the Board Committees and the FirstNet Board may involve commercial or financial information that is privileged or confidential or other legal matters affecting FirstNet. As such, the Board Committee Chairs and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Times and Dates of Meeting: A combined meeting of the FirstNet Board and Board Committees will be held on December 7, 2017, between 9:00 a.m. and 11:30 a.m., Eastern Standard Time (EST). The meeting of the FirstNet Board and Board Committees will be open to the public via teleconference and WebEx from 9:00 a.m. to 11:30 a.m. EST. The times listed above are subject to change. Please refer to FirstNet's Web site at www.firstnet.gov for the most up-to-date information.

Place: The combined meeting of the FirstNet Board and Board Committees will be conducted via teleconference and WebEx.

Other Information: The combined meeting of the Board Committees is open to the public via teleconference and WebEx only. On the date and time of the meeting, members of the public may listen to the meeting by dialing toll free 1-888-566-5786 and using

passcode 5957846. To view the slide presentation, the public may visit the URL: <https://www.mymeetings.com/nc/join/> and enter Conference Number PWXW5929049 and audience passcode 5957846. Alternatively, members of the public may view the slide presentation by directly visiting the URL: <https://www.mymeetings.com/nc/join.php?i=PWXW5929049&p=5957846&t=c>.

If you experience technical difficulty, please contact the Conferencing Center customer service at 1-866-900-1011. Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis.

The FirstNet Board and Combined Committee Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Ms. Miller-Kuwana by telephone (571) 665-6177 or email at Karen.Miller-Kuwana@firstnet.gov at least five (5) business days before the applicable meeting.

Records: FirstNet maintains records of all FirstNet Board proceedings. Minutes of the FirstNet Board Meeting and the Board Committee Meetings will be available at www.firstnet.gov.

Dated: November 27, 2017.

Karen Miller-Kuwana,

Board Secretary, First Responder Network Authority.

[FR Doc. 2017-25868 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-TL-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-837]

Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: Final Results of Antidumping Duty Administrative Review; 2015– 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 3, 2017, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2015, through June 30, 2016. We received no comments or requests for a hearing. Therefore, we have made no changes for the final results and continue to find that sales of subject merchandise by Nan Ya Plastics Corporation (Nan Ya) were

made at less than normal value during the POR.

DATES: Applicable December 1, 2017.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5255.

Background

On August 3, 2017, the Department published the preliminary results for this administrative review.¹ We invited interested parties to comment on the *Preliminary Results*. We received no comments or requests for a hearing from any party. The Department conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results*. As there are no changes from, or comments upon, the *Preliminary Results*, the Department finds that there is no reason to modify its analysis and calculations. Thus, we continue to find that sales of subject merchandise by Nan Ya were made at less than normal value during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, see the *Preliminary Results* and the accompanying Preliminary Decision

Memorandum.² The final weighted-average dumping margin for the period July 1, 2015, through June 30, 2016, for Nan Ya is as follows:

Producer/exporter	Weighted-average margin (percent)
Nan Ya Plastics Corporation	1.34

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review. For Nan Ya, we will base the assessment rate for the corresponding entries on the margin listed above.

For entries of subject merchandise produced by Nan Ya for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than fair-value (LTFV) investigation, 2.40 percent,³ if there is no rate for the intermediate company(ies) involved in the transaction.⁴

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Nan Ya will be 1.34%, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not

a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 2.40 percent, which is the all-others rate established by the Department in the LTFV investigation.⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: November 27, 2017.

Carole Showers,

Executive Director, Office of Policy performing the duties of the Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017-25905 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Reviews; 2015-2016*, 82 FR 36122 (August 3, 2017) (*Preliminary Results*).

² See *Preliminary Results*, and accompanying Preliminary Issues and Decision Memorandum.

³ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 44174, 44175 (July 1, 2002) (*PET Film from Taiwan Amended Final Determination*), unchanged in *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 46566 (July 15, 2002) (*Correction Notice*).

⁴ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

⁵ See *PET Film from Taiwan Amended Final Determination*, 67 FR at 44174 (July 1, 2002) unchanged in *Correction Notice*, 67 FR at 46566 (July 15, 2002).

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-836]****Glycine From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2016-2017**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC) for the period March 1, 2016, through February 28, 2017, based on the timely withdrawal of the request for review.

DATES: Effective December 1, 2017.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3931 or (202) 482-7924, respectively.

Background

On March 6, 2017, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on glycine from the PRC for the period March 1, 2016, through February 28, 2017.¹ On March 31, 2017, the Department received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order, with respect to three companies, from GEO Specialty Chemicals, Inc. (GEO), a domestic producer of glycine. Based on this request and in accordance with section 751(a) of the Act, the Department published a notice of initiation of the review in the **Federal Register** on May 9, 2017.² On July 28, 2017, GEO filed a timely withdrawal of its request for a review for each of the three companies.³

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative

review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, GEO withdrew its request for review by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on glycine from the PRC covering the period March 1, 2016, through February 28, 2017.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: November 27, 2017.

James Maeder,

Senior Director performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017-25912 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-520-803]****Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the United Arab Emirates (UAE). The period of review (POR) is November 1, 2015, through October 31, 2016. The review covers two producer/exporters of the subject merchandise, JBF RAK LLC (JBF) and UFlex Limited (UFlex). The Department preliminarily determines that sales of subject merchandise have been made below normal value by JBF. In addition, the Department preliminarily finds that UFlex had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 1, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4261.

SUPPLEMENTARY INFORMATION:**Scope of the Order**

The merchandise subject to the order is polyethylene terephthalate film. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheading: 3920.62.00.90. Although the HTSUS number is provided for convenience and for customs purposes, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.¹

Methodology

The Department is conducting this review in accordance with section

¹ See Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates and Preliminary Determination of No Shipments" (Preliminary Decision Memorandum), dated concurrently with this notice.

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 12551 (March 6, 2017).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 21513 (May 9, 2017).

³ See *Withdrawal of Request for Administrative Review*, dated July 28, 2017.

751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted by this notice.² A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit in room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

On February 1, 2017, UFlex reported that it made no shipments of subject merchandise to the United States during the POR.³ To confirm UFlex's no shipment claim, the Department issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review UFlex's no shipment claim.⁴ CBP did not report that it had any information to contradict UFlex's claim of no shipments during the POR.

Given that UFlex certified that it made no shipments of subject merchandise to the United States during the POR and there is no information calling its claim into question, we preliminarily determine that UFlex made no shipments during the POR. Consistent with the Department's practice, we will not rescind the review with respect to UFlex but, rather, will complete the review and issue instructions to CBP based on the final results.⁵

² *Id.*

³ See letter from FLEX Middle East FZE and UFlex, "Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Notice of No Sales," dated February 1, 2017.

⁴ See No shipment inquiry for polyethylene terephthalate film, sheet, and strip from the United Arab Emirates produced and/or reported by UFlex Limited (A-520-803), message number 7053303 (February 22, 2017).

⁵ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping*

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin for the period November 1, 2015, through October 31, 2016:

Manufacturer/Exporter	Weighted-average margin (percent)
JBF RAK LLC	19.01

Disclosure and Public Comment

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may not be filed later than five days after the time limit for filing case briefs.⁶ Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.⁷ Executive summaries should be limited to five pages total, including footnotes.⁸

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR 51306, 51306–51307 (August 28, 2014).

⁶ See 19 CFR 351.309(d)(1).

⁷ See 19 CFR 351.309(c)(2), (d)(2).

⁸ *Id.*

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.⁹

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁰ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

In accordance with the Department's "automatic assessment" practice, for entries of subject merchandise during the POR produced by JBF for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹¹ In addition, if the Department determines that UFlex had no shipments of subject merchandise, any suspended entries

⁹ See section 751(a)(3)(A) of the Act.

¹⁰ In these preliminary results, the Department applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

¹¹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

that entered under UFlex's case number will be liquidated at the all-others rate if there is no rate for the intermediate companies involved in the transaction.¹²

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.05 percent, the all-others rate established in the investigation.¹³ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 27, 2017.

Carole Showers,

Executive Director, Office of Policy, performing the duties of the Deputy Assistant Secretary, for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Date of Sale
5. Discussion of Methodology
6. Product Comparisons
7. Export Price/Constructed Export Price
8. Normal Value
9. Currency Conversions
10. Conclusion

[FR Doc. 2017–25904 Filed 11–30–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920]

Lightweight Thermal Paper From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on lightweight thermal paper (LWTP) from the People's Republic of China (PRC). The period of review (POR) is November 1, 2015, through October 31, 2016. The review covers three exporters of subject merchandise: Shenzhen Formers Printing Co., Ltd. (Formers), Sailing International Limited (Sailing), and Suzhou Xiandai Paper Production Co (Xiandai). The Department preliminarily finds that Formers, Sailing, and Xiandai have not demonstrated eligibility for a separate rate in this segment of the proceeding, and therefore, for the preliminary results, we are treating Formers, Sailing, and Xiandai as part of the PRC-wide entity. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 1, 2017.

FOR FURTHER INFORMATION CONTACT: Alex Rosen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7814.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 2017, the Department initiated the eighth administrative review of the antidumping duty order on LWTP from the PRC on three exporters: Formers, Sailing, and Xiandai.¹ In the *Initiation Notice*, the Department stated that all firms identified in the notice that wished to qualify for separate rate status in the administrative review must complete either a separate rate application or certification, due to the Department no later than 30 calendar days after the publication of the notice, *i.e.*, February 13, 2017.² None of the respondents—Formers, Sailing, and Xiandai—timely submitted either a complete separate rate application or separate rate certification or a statement of “no shipments” during the POR. Nevertheless, per our practice, on March 16, 2017, the Department uploaded and released onto the administrative record of this proceeding an antidumping questionnaire to each exporter, Formers, Sailing, and Xiandai. However, due to an inadvertent oversight, the Department did not issue a physical copy of the questionnaire to any respondent, as is the Department's practice when foreign firms are not represented by counsel in the United States or representatives thereof have not otherwise contacted the Department, and thus, the Department was unable to confirm whether parties received the questionnaire. Therefore, on July 28, 2017, the Department reissued the antidumping questionnaire to Formers, Sailing and Xiandai, served physical copies of the questionnaires on all the respondents in accordance with its standard practice, and extended the due date of the questionnaire response.³ On September 7, 2017, the Department requested a U.S. Customs and Border Protection (CBP) data file of entries of subject merchandise associated with Sailing, Formers or Xiandai during the POR. On September 11, 2017, the Department received a response to its request indicating there were no suspended AD/CVD entries associated with Sailing, Formers or Xiandai during the POR.⁴ For a complete description of the events that followed the initiation of

¹² *Id.*

¹³ See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595, 66597 (November 10, 2008).

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017) (*Initiation Notice*).

² *Id.* at 4295.

³ See Memorandum, “Due Date to Respond to the Department's Initial Questionnaire,” dated July 28, 2017.

⁴ See Memorandum, “U.S. Customs and Border Protection Import Data,” dated September 11, 2017.

this administrative review, *see* the Preliminary Decision Memorandum.⁵

Scope of the Order

The merchandise covered by this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m²) (with a tolerance of ± 4.0 g/m²) or less; irrespective of dimensions;⁶ with or without a base coat⁷ on one or both sides; with thermal active coating(s)⁸ on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;⁹ and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, 4823.40.00, 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050.^{10 11}

⁵ See Memorandum, "Decision Memorandum for Preliminary Results of the 2015–2016 Antidumping Duty Administrative Review: Lightweight Thermal Paper from the People's Republic of China" (Preliminary Decision Memorandum), dated concurrently with and hereby adopted by this notice.

⁶ LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

⁷ A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

⁸ A thermal active coating is typically made of sensitizer, dye, and co-reactant.

⁹ A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

¹⁰ HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP).

¹¹ As of January 1, 2009, the International Trade Commission deleted HTSUS subheadings 4811.90.8040 and 4811.90.9090 and added HTSUS subheadings 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050 to the *Harmonized Tariff Schedule of the United States* (2009). *See Harmonized Tariff Schedule of the United States* (2009), available at www.usitc.gov. These HTSUS subheadings were added to the scope of the order in LWTP's LTFV investigation.

Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and ACCESS is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Separate Rates and Preliminary Results of Review

Because Sailing and Xiandai did not respond to the Department's antidumping duty questionnaire, the Department preliminarily determines that Sailing and Xiandai did not establish their eligibility for separate rate status.

In its submissions to the Department, Formers submitted information indicating that it made sales to U.S. customers during the POR which includes subject merchandise, but Formers did not provide evidence of a suspended entry of subject merchandise into the United States during the POR. Further, our inquiry of the CBP data reported no suspended AD/CVD entries of subject merchandise associated with Formers during the POR. Accordingly, Formers did not establish its eligibility for separate rate status.

Therefore, the Department preliminarily determines that these three companies are part of the PRC-wide entity. Because no party requested a review of the PRC-wide entity, the entity is not under review, and the PRC-wide entity's rate of 115.29 percent from the investigation is not subject to

change.¹² For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Public Comment and Opportunity To Request a Hearing

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.¹³ Rebuttals to case briefs must be limited to issues raised in the case briefs and must be filed within five days following the time limit for filing case briefs.¹⁴ Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.¹⁵ Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.¹⁶

Any interested party may request a hearing within 30 days of publication of this notice.¹⁷ Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.¹⁸

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. Because all three respondents are found to be ineligible for a separate rate, the Department will instruct CBP to liquidate all appropriate entries at 115.29 percent, *i.e.*, the rate for the PRC-wide entity. The Department intends to issue assessment instructions to CBP 15

¹² See *Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China*, 73 FR 70959, 70960 (November 24, 2008).

¹³ See 19 CFR 351.309(c)(1)(ii).

¹⁴ See 19 CFR 351.309(d)(1)–(2).

¹⁵ See 19 CFR 351.309(c)(2), (d)(2).

¹⁶ See 19 CFR 351.303 (for general filing requirements).

¹⁷ See 19 CFR 351.310(c).

¹⁸ See 19 CFR 351.310(d).

days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have a separate rate from the completed segment for the most recent period, the cash deposit rate will continue to be the exporter-specific rate published for that most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be rate for the PRC-wide entity, 115.29 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: November 27, 2017.

Carole Showers,

Executive Director, Office of Policy, performing the duties of the Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology

V. Recommendation

[FR Doc. 2017-25903 Filed 11-30-17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF776

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Gull and Climate Research in Glacier Bay National Park, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the National Park Service (NPS) for authorization to take marine mammals incidental to glaucous-winged gull and climate monitoring research activities in Glacier Bay National Park (GLBA NP), Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 2, 2018.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.molineaux@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

www.nmfs.noaa.gov/pr/permits/incidental/research.htm without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Jonathan Molineaux, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: www.nmfs.noaa.gov/pr/permits/incidental/research.htm. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine

mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 31 2017, NMFS received a request from the NPS for an IHA to take marine mammals incidental to glaucous-winged gull and climate monitoring research activities in GLBA NP, Alaska. The application was considered adequate and complete on February 10 2017. NPS's request is for take of harbor seals by Level B harassment. Neither NPS nor NMFS expect mortality to result from the proposed research and, therefore, an IHA is appropriate.

NMFS previously issued four IHAs to the NPS for similar work (82 FR 24681, May 20 2017; 81 FR 34994, June 1 2016; 80 FR 28229, March 24 2015; 79 FR 56065, September 18 2014). NPS complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) within those IHAs and information regarding their monitoring results may be found in the *Estimated Take* section.

Description of Proposed Activity

Overview

NPS is proposing to conduct two research projects within GLBA NP, southeast Alaska: (1) Glaucous-winged gull monitoring and (2) the installation

and maintenance of a weather station operation for long-term climate monitoring. NPS would conduct ground and vessel surveys at four study sites within GLBA NP for gull monitoring: Boulder Island, Lone Island, Geikie Rock, and Flapjack Island. These sites will be accessed up to five times per year. In addition, NPS is requesting permission to access Lone Island an additional four times per year for weather station installation, maintenance, and operation bringing the total number of site visits to Lone Island to nine. This includes adding one additional trip for any emergency repairs that may be needed. Researchers accessing the islands for gull monitoring and weather station operation may occasionally cause behavioral disturbance (or Level B harassment) of harbor seals. NPS expects that the disturbance to harbor seals from both projects will be minimal and will be limited to Level B harassment.

The purpose for the above-mentioned research activities are as follows. The gull monitoring studies are mandated by a Record of Decision of a Legislative Environmental Impact Statement (LEIS) (NPS 2010) which states that NPS must initiate a monitoring program for glaucous-winged gulls (*Larus glaucescens*) to inform future native egg harvest by the Hoonah Tlingit in Glacier Bay, Alaska. Installation of a new weather station on Lone Island is being planned as one of several installations intended to fill coverage gaps among existing weather stations in GLBA NP (NPS 2015a). These new stations will be operated as the foundation of a new long-term climate-monitoring program for GLBA NP.

Dates and Duration

The IHA would be valid from March 1 2018 to February 28 2019. Ground and vessel surveys for nesting gulls will be conducted from May 1 through September 30, 2018 on bird nesting islands in GLBA NP (see Figure 1 of application) and other suspected gull colonies. There will be 1–3 ground visits and 1–2 vessel surveys at each site for a maximum of five visits per site. Duration of surveys will be 30 minutes to two hours each.

Installation and maintenance of the Lone Island weather station will begin March 1 2018. Maintenance and emergency repair-related site visits to this location will occur between March 2018 to April 2018, and October 2018 to February 2019 to avoid the gull-nesting period. Unscheduled maintenance that is needed outside of the regularly scheduled October 1 through April 30 time period will require Superintendent

authorization to ensure protection of park resources and values. Initial station installation and possible unanticipated station failures requiring emergency repair will require up to eight hours. Two planned maintenance visits will require approximately two hours per visit.

Specific Geographic Region

The proposed study sites would occur in the vicinity of the following locations: Boulder, Lone, and Flapjack Islands, and Geikie Rock in GLBA NP, Alaska (see Figure 1 of application). Each of these study sites are located on the eastern side of the park situated near Geikie Inlet and all provide harbor seal habitat throughout the year, however the highest presence of seals occurs during the breeding and molting season (May to October) (Lewis *et al.*, 2017). On Boulder and Flapjack islands, the proposed gull monitoring study sites are located on the north side whereas harbor seal haul-outs are positioned on the south (Lewis *et al.*, 2017). Also, on Lone Island, harbor seals are sited near tidal rocks off the northeast tip of island (ADEC, 2014), whereas on Geikie Rock they are known to be found throughout the entire site due to its small size (Lewis 2017). NPS will also conduct studies at South Marble Island and Tlingit Point Islet; however, there are no reported harbor seal haul-out sites at those locations.

Detailed Description of Specific Activity

Glaucous-Winged Gull Monitoring

Glaucous-winged gulls are common inshore residents along the northwestern coast of North America (Hayward and Verbeek, 2008). These gulls nest colonially in small and large aggregations, often on islands. Glaucous-winged gulls are abundant in Southeast AK throughout the year and nest colonially on islands in Glacier Bay from mid-May to August (Patten, 1974). Traditionally the Hoonah Tlingit, whose ancestral homeland encompasses GLBA NP, harvested gull eggs annually during the spring and early summer months (Hunn, 2002). This historic egg harvest in Glacier Bay was an important activity both for cultural and nutritional purposes. Legislation is currently underway (Hoonah Tlingit Traditional Gull Egg Use Act: S. 156 and H. R. 3110) to allow native subsistence harvest of glaucous-winged gulls at up to 15 locations in GLBA NP. A LEIS for gull egg harvest was developed and finalized in 2010 (NPS 2010). The LEIS Record of Decision mandates that the NPS develop a monitoring program to inform a yearly traditional harvest plan and ensure that

harvest activities do not impact park purposes and values (NPS 2010). Annual monitoring requirements outlined in the LEIS include: Identify the onset of gull nesting, conduct mid-season adult counts, count number of eggs in nests during harvest, conduct complete nest surveys just before hatch on harvested islands, and document other bird and marine mammal species (pinnipeds present onshore) that may be impacted by harvest activities. Harvest sites will be selected based on several characteristics including size of colony; population parameters including productivity, population status, recent harvest, age of colony; and minimizing disturbance to other species present.

Gull monitoring will be conducted using a combination of ground and vessel surveys by landing at specific access points on the islands. NPS proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site from the period of May 1 through September 30, 2018.

Ground-Based Surveys for Gull Monitoring: These surveys involve two trained observers conducting complete nest counts of the gull colonies. The survey will encompass all portions of the gull colony accessible to humans and thus represent a census of the harvestable nests. GPS locations of nests and associated vegetation along with the number of live and predated eggs will be collected during at least one visit to obtain precise nest locations to characterize nesting habitat. On subsequent surveys, nest counts will be tallied on paper so observers can move through the colony more quickly and minimize disturbance. Ground surveys will be discontinued after the first hatched chick is detected to minimize disturbance and mortalities. During ground surveys, observers will also record other bird and marine mammal species in proximity to colonies.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (kn) (4.6 miles per hour (mph)). Ground surveys generally last 30 minutes (min) to two hours (hrs) each depending on the size of the island and the number of nesting gulls. During ground surveys, Level B take of harbor seals can occur from either acoustic disturbance from motorboat sounds or visual disturbance from the presence of observers. Past monitoring reports from 2015–2016 show that most takes (flushes or movements greater than one meter) from ground surveys occurred as

vessels approached a study site to perform a survey. Takes usually occurred while the vessel was 50–100 meters from the island (NPS 2015b; NPS 2016).

Vessel-Based Surveys for Gull Monitoring: Surveys will be conducted from the deck of a motorized vessel (10 to 12 meters) and will be used to count the number of adult and fledgling gulls that are visible from the water (Zador, 2001; Arimitsu *et al.*, 2007). Vessel surveys provide more reliable estimate of the numbers of gulls in the colony than ground surveys because NPS can count nesting birds in areas that are inaccessible by foot and because the birds do not flush from the researchers presence. GLBA NP would conduct these surveys by circling the islands at approximately 100 m from shore while counting the number of adult and chick gulls as well as other bird and mammal species present. Surveys can be from 30 min to two hrs in duration. During vessel surveys, Level B take of harbor seals can occur from either acoustic disturbance from motorboat sounds or visual disturbance from the presence of observers. Past monitoring reports from 2015–2016 show that most takes (flushes or movements greater than one meter) from vessel surveys occurred as the vessel was 100 m from the island (NPS 2015b; NPS 2016).

Weather and Climate Monitoring

Weather and climate were chosen as priorities for long-term monitoring of the Glacier Bay ecosystem during development of the Southeast Alaska Network Vital Signs Monitoring Plan (Moynahan *et al.*, 2008). An inventory of existing weather stations revealed the need for additional station installations to represent the park's geographic (*i.e.*, east-west and north-south) and elevation-related climate gradients (Davey *et al.*, 2007). A system of eight new stations were ultimately identified to meet this goal, including the Lone Island station, which is proposed to be authorized for installation and maintenance here. Installation and maintenance procedures are described further in a 2015 Environmental Assessment and associated Finding of No Significant Impact (NPS 2015a). During climate monitoring activities, Level B take of harbor seals can occur from either acoustic disturbance from motorboat sounds or visual disturbance from the presence of observers.

Lone Island will be accessed by a 10–20 meter motor vessel to install and maintain the weather station. Materials will be carried by hand to the installation location. The exact location of the weather station on Lone Island

has not been determined yet. However, the climate monitoring crew will work with NPS bird and pinniped biologists to place the weather station in an area that will not impact nesting seabirds and harbor seals. Also, it is possible that the weather station can be accessed in a fashion that will not disturb hauled out harbor seals, but NPS is requesting authorization to ensure its ability to install and perform yearly maintenance of the weather station.

Station configuration is typical of Remote Automated Weather Stations (RAWS) operated by land management agencies for weather and climate monitoring, fire weather observation, and other uses. A number of design elements will be modified as mitigation to reduce station visibility along a popular cruise ship route. An 8-ft monopole and associated guy lines will be installed onto which instrumentation and an environmental enclosure will be secured. A fuel cell and sealed 12V battery housed in a watertight enclosure will provide power to the station. Standard meteorological sensors for measuring precipitation, wind, temperature, solar radiation, and snow depth will be used. Data will be housed in internal memory and communicated via satellite telemetry to the Wildland Fire Management Institute where it is relayed to a variety of repositories such as the Western Regional Climate Center in near real-time.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see “Proposed Mitigation” and “Proposed Monitoring and Reporting”).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; www.nmfs.noaa.gov/pr/sars/) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS's Web site (www.nmfs.noaa.gov/pr/species/mammals/).

Table 1 lists all species with expected potential for occurrence within the survey areas and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy

(2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here

as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area,

if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (Muto *et al.*, 2017). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (Muto *et al.*, 2017).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
<i>Steller's sea lion</i>	<i>Eumetopias jubatus</i>	Eastern U.S. Western U.S.	-/-; N E/D; Y	41,638 (n/a, 41,638, 2015) 50,983	306 2,498	236 108
Family Phocidae (earless seals)						
Harbor seal	<i>Phoca vitulina richardii</i>	Glacier Bay/Icy Strait ...	-/-; N	7,210 (n.a.; 5,647; 2011)	169	104

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

NOTE—*Italicized species are not expected to be taken or proposed for authorization.*

All marine mammal species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and/or spatial occurrence of Steller's sea lion is such that take is not expected to occur and researchers would not approach Steller sea lions; therefore, they are not discussed further beyond the explanation provided here.

A total of five Steller sea lions have been observed during the 2015, 2016, and 2017 GLBA NP gull survey seasons (climate monitoring did not take place during these years) (NPS 2015b; NPS 2016; NPS 2017). However, all Steller sea lions that were spotted were observed outside the study area. Although Steller sea lions may be present in the action area, NPS has proposed to stay at least 100 m away from all Steller sea lions (see Proposed Mitigation). Also, due to their tolerance to vessels and lack of response to humans from a distance, Level B harassment of Steller sea lions at a distance of 100 meters is not likely to occur. Therefore, Steller sea lions are not discussed further in this proposed

authorization other than with respect to mitigation.

In addition, sea otters may be found in GLBA NP. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Harbor Seals

Harbor seals are the most abundant marine mammal species found within the action area and are present year-round. Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. The current statewide abundance estimate for Alaskan harbor seals is 205,090 (Muto *et al.*, 2017), based on aerial survey data collected during 1998–2011. In 2010, harbor seals in Alaska were partitioned into 12 separate stocks based largely on genetic structure (Allen and Angliss, 2010). Harbor seals have declined dramatically in some parts of their range over the

past few decades, while in other parts their numbers have increased or remained stable over similar time periods.

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice (Allen and Angliss, 2014). They are non-migratory; their local movements are associated with tides, weather, season, food availability, and reproduction, as well as sex and age class (Allen and Angliss, 2014; Boveng *et al.*, 2012; Lowry *et al.*, 2001; Swain *et al.*, 1996). Pupping in Alaska generally takes place in May and June; while molting generally occurs from June to October.

Harbor seals of Glacier Bay range from Cape Fairweather southeast to Column Point, extending inland to Glacier Bay, Icy Strait, and from Hanus Reef south to Tenakee Inlet (Muto *et al.*, 2017). The Glacier Bay/Icy Strait stock showed a negative population trend from 1992 to 2008 in June and August for glacial (–7.7 percent/year; –8.2 percent/year) and terrestrial sites (–12.4 percent/year, August only) (Womble *et al.*, 2010 as cited in Muto *et al.*, 2017). Trend estimates by Mathews and Pendleton (2006) were similarly negative for both

glacial and terrestrial sites. Prior to 1993, seal counts were up to 1,347 in the East Arm of Glacier Bay; 2008 counts were fewer than 200 (Strevler, 1979; Molnia, 2007 as cited in Muto *et al.*, 2017). These observed declines in harbor seals resulted in new research efforts which were initiated in 2004 and were aimed at trying to further understand the biology and ecology of seals and possible factors that may have contributed to the declines (*e.g.*, Herreman *et al.* 2009, Blundell *et al.* 2011, Hueffer *et al.* 2012, Womble and Gende 2013a, Womble *et al.* 2014) with an emphasis on possible factors that may have contributed to the declines. The recent studies suggest that (1) harbor seals in Glacier Bay are not significantly stressed due to nutritional constraints (Blundell *et al.*, 2011), (2) the clinical health and disease status of seals within Glacier Bay is not different than seals from other stable or increasing populations (Hueffer *et al.* 2012), and (3) disturbance by vessels does not appear to be a primary factor driving the decline (Young 2009).

Long-term monitoring of harbor seals on glacial ice has occurred in Glacier Bay since the 1970s (Mathews and Pendleton, 2006) and has shown this area to support one of the largest

breeding aggregations in Alaska (Strevler, 1979; Calambokidis *et al.*, 1987 as cited in Muto *et al.*, 2015). After a large scale retreat of the Muir Glacier (more than 7 km), in the East Arm of Glacier Bay, between 1973 and 1986 and the subsequent grounding and cessation of calving in 1993, floating glacial ice was greatly reduced as a haul-out substrate for harbor seals and ultimately resulted in the abandonment of upper Muir Inlet by harbor seals (Calambokidis *et al.*, 1987; Hall *et al.*, 1995; Mathews, 1995 as cited in Muto *et al.*, 2017). The most recent long-term trend estimate for harbor seals at terrestrial sites in Glacier Bay for the 22-year period from 1992–2013 is -6.91 percent/year (SE = 0.40, 95% CI = -7.69 , -6.13) (Womble *et al.* 2015). This trend is less negative than previous estimates stated in the paragraph above. In addition, from 2004–2013, there was a 10-year trend estimate of 9.64 percent/year (SE = 1.66, 95% CI = 6.40, 12.89) (Womble *et al.*, 2015). Similarly, estimates of number of seals at terrestrial and ice sites combined further indicate that the decline has lessened and seal numbers may even be increasing since 2004 (Table 3: Womble *et al.*, 2015).

Results from satellite telemetry studies suggest that harbor seals traveled extensively beyond the boundaries of Glacier Bay during the post-breeding season (September–April); however, harbor seals demonstrated a high degree of inter-annual site fidelity (93 percent) to Glacier Bay the following breeding season (Womble and Gende 2013b). Glacier Bay is also home to the only enforceable regulations in United States waters aimed at protecting harbor seals from vessel and human-related disturbance (Jansen *et al.*, 2010). Spatial and temporal regulations for vessels transiting in and near harbor seal breeding areas, and operating regulations once in those areas, are all aimed at reducing impacts of human visitation.

Harbor seals from the Glacier Bay/Icy Strait stock can be found hauled out at four of the gull monitoring study sites (Table 2). Seal counts from gull monitoring surveys likely represent a minimum estimate due to difficulty observing marine mammals from a vessel. Counts from gull monitoring surveys are conducted during high tide so fewer seals may be present.

TABLE 2—NUMBER OF OBSERVED HARBOR SEALS AND LEVEL B TAKES FOR THE SPECIES UNDER IHAS AT GULL STUDY SITES FROM 2015–2017 IN GLBA NP

Site name	Latitude (dd)	Longitude (dd)	2015 observed/taken	2016 observed/taken	2017 observed/taken
Boulder	58.55535	– 136.01814	13/11	21/0	4/0
Flapjack	58.58698	– 135.98251	0/0	101/41	0/0
Geikie	58.69402	– 136.31291	45/14	37/0	33/33
Lone	58.72102	– 136.29470	98/32	58/39	49/0
Total	156/57	217/80	86/33

As alluded to, there can be greater numbers of seals on the survey islands than what is detected by the NPS during the gull surveys. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 of the application). However, harbor seals hauled-out at Flapjack Island are generally on the southern end whereas the gull colony is on the northern end. Similarly, harbor seals on Boulder Island tend to haul out on the southern end while the gull colony is located and can be accessed on the northern end without disturbance. Aerial survey counts for harbor seals are conducted during low tide while ground and vessel surveys are conducted during high tide, which along with greater visibility during aerial surveys, may also

contribute to why there are greater numbers of seals observed during the aerial surveys because there is more land available to use as a haul-out during low tide.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The “Estimated Take by Incidental Harassment” section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact Analysis and Determination” section considers the content of this section, the “Estimated Take by Incidental

Harassment” section, and the “Proposed Mitigation” section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

As previously stated, acoustic and visual stimuli generated by motorboat operations and the presence of researchers have the potential to cause Level B harassment of harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock within GLBA NP. The following discussion provides further detail on the potential visual and acoustic disturbances harbor seals may encounter during the NPS’ gull and climate monitoring activities.

Human and Vessel Disturbance

Harbor seals may potentially experience behavioral disruption rising to the level of harassment from monitoring and research activities, which may include brief periods of airborne noise from research vessels and visual disturbance due to the presence and activity of the researchers both on vessels and on land during ground surveys. Disturbed seals are likely to experience any or all of these stimuli, and take may occur due to any in both isolation or combined with one another. Due to the likely constant combination of visual and acoustic stimuli resulting from the presence of vessels and researchers, we do not consider impacts from acoustic and visual stimuli separately.

Disturbances resulting from human activity can impact short- and long-term pinniped haul-out behavior (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.*, 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites, 2006). Disturbance include a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on the species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*,

1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). These behavioral reactions from marine mammals are often shown as: Changing durations of surfacing and dives, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

Visual stimuli resulting from the presence of researchers have the potential to result in take of harbor seals on the research islands where seals haul out. As noted, harbor seals can exhibit a behavioral response (e.g., including alert behavior, movement, vocalizing, or flushing) to visual stimuli). NMFS does not consider the lesser reactions (e.g.,

alert behavior such as raising a head) to constitute harassment. Table 3 displays NMFS' three-point scale that categorizes pinniped disturbance reactions by severity. Observed behavior falling within categories two and three would be considered behavioral harassment.

Upon the occurrence of low-severity disturbance (*i.e.*, the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the same haul-out within minutes to hours of a stimulus (Allen *et al.*, 1984 (Johnson and Acevedo-Gutierrez, 2007). As a result, a minimal amount of animals may be taken more than once during the proposed survey activities so the number of takes likely represents exposures. However, since the highest number of annual visits to three gull study sites will be five and one survey site will be nine, it is expected that individual harbor seals at Boulder Island, Flapjack Island, and Geike Rock will be disturbed no more than five times per year and on Lone Island, no more than nine times per year.

TABLE 3—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts would be recorded, but not counted as a 'take'.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. These movements would be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water would be recorded and counted as a 'take'.

Numerous studies have shown that human activity can flush pinnipeds off haul-out sites and beaches (Kenyon, 1972; Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; and Mortenson *et al.*, 2000). In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.*, kayaks, canoes, motorboats and sailboats) on harbor seal haul-out behavior in M tis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seals flight reactions could be linked to a surprise factor by kayaks-

canoes, which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haul-out behavior of harbor seals in the M tis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haul-out sites on Yellow Island, Washington state. The authors estimated the minimum distance between the vessels and the haul-out

sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances, which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored

them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haul-out site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). Specific reactions from past NPS gull monitoring surveys are detailed in this proposed IHA's Estimated Take Section.

Vessel Strike

The probability of vessel and marine mammal interactions (*i.e.*, motorboat strike) occurring during the proposed research activities is unlikely due to the motorboat's slow operational speed, which is typically 2 to 3 knots (2.3 to 3.4 mph) and the researchers continually scanning the water for marine mammals presence during transit to the islands. Thus, NMFS does not anticipate that strikes or collisions would result from the movement of the motorboat.

Harbor Seal Pupping

During the harbor seal breeding (May-June) and molting (August) periods, ~66

percent of seals in Glacier Bay inhabit the primary glacial ice site and ~22 percent of seals are found in and adjacent to a group of islands in the southeast portion of Glacier Bay. At the proposed study sites in 2016, only one pup was observed and in 2017 and 2015, no pups were observed during project activities. Pups have been observed during NPS aerial surveys during the pupping seasons (conducted during low tide), but in few numbers (see Table 4). NMFS does not anticipate that the proposed activities would result in separation of mothers and pups as pups are rarely seen at the study sites.

TABLE 4—AVERAGE AND MAXIMUM COUNTS OF HAULED OUT HARBOR SEAL PUPS AT GLAUCOUS-WINGED GULL STUDY SITES DURING HARBOR SEAL MONITORING AERIAL SURVEYS FROM 2007–2016

[Womble unpublished data]

Site	Average of pup count	StdDev of pup count	Max of pup count
Boulder Island	0.8	1.3	5
Flapjack Island	14.9	11.5	43
Geikie Rock	0.1	0.4	2
Lone Island	0.8	0.9	4
Grand Total	4.74	9	43

Summary

Based on studies described here and previous monitoring reports from GLBA NP (Discussed further in this proposed IHA's Estimated Take Section), we anticipate that any pinnipeds found in the vicinity of the proposed project could have short-term behavioral reactions (*i.e.*, may result in marine mammals avoiding certain areas) due to noise and visual disturbance generated by: (1) Motorboat approaches and departures and (2) human presence during gull and climate research activities. We would expect the pinnipeds to return to a haul-out site within minutes to hours of the stimulus based on previous research (Allen *et al.*, 1984). Pinnipeds may be temporarily displaced from their haul-out sites, but we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of the proposed research as activities are short in duration (30 min to up to two hours), and previous surveys have demonstrated that seals have returned to their haul-out sites and have not permanently abandoned the sites.

NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds. NMFS does not anticipate that vessel strikes would result from the

movement of the motorboat. The proposed activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat. The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections).

Marine Mammal Habitat

NMFS does not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.*, fish and invertebrates). The main impact associated with the proposed activity will be temporarily elevated noise levels from motorboats and human disturbance on marine mammals potentially leading to temporary displacement of a site, previously discussed in this notice. NPS' EIS for gull monitoring surveys in GLBA concluded that the activities do not result in the loss or modification to marine mammal habitat (NPS 2010). Additionally, any minor habitat

alterations stemming from the installation and maintenance of NPS' climate tower will be located in an area that will not impact marine mammals. As a result, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations. This includes no effects on marine mammal habitat or long- and short-term physical impacts to pinniped habitat in Glacier Bay, AK. In all, the proposed activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is "small" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to motorboats and the presence of NPS personnel. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Harbor seals may be disturbed when vessels approach or researchers go ashore for the purpose of monitoring

gull colonies and for the installation and maintenance of the Lone Island weather tower. Nevertheless, harbor seals tend to haul out in small numbers at study sites. Using monitoring report data from 2015 to 2017 (see raw data from Tables 1 of the 2017, 2016 and 2015 Monitoring Reports), the average number of harbor seals per survey visit was calculated to estimate the approximate number of seals observers would find on any given survey day. As a result, the following averages were determined for each island: Boulder Island—average 3.45 seals, Flapjack Island—average 10.10 seals, Geikie Rock—average 9.58 seals, and Lone Island average of 18.63 seals (See Table 5). Estimated take for gull and climate monitoring was calculated by multiplying the average number of seals observed during past gull monitoring surveys (2015–2017) by the number of total site visits. This includes five visits to Boulder Island, Flapjack Island, and Geikie Rock and nine visits

to Lone Island (to include four site visits for climate monitoring activities). Therefore, the total incidents of harassment equals 283 (See Table 5).

During climate monitoring, which is expected to take place between March 2018 to April 2018, and October 2018 to February 2019, seal numbers are expected to dramatically decline within the action area. Although harbor seal survey data within GLBA NP is lacking during the months of October through February, results from satellite telemetry studies suggest that harbor seals travel extensively beyond the boundaries of GLBA NP during the post-breeding season (September–April) (Womble and Gende, 2013b). Therefore, using observation data from past gull monitoring activities (that occurred from May to September) is applicable when estimating take for climate monitoring activities, as it will provide the most conservative estimates.

TABLE 5—PROPOSED LEVEL B TAKES BY HARASSMENT DURING NPS GULL AND CLIMATE MONITORING SURVEYS

Site proposed for survey	Average number of seals observed per visit *	Number of proposed site visits	Proposed Level B take ¹	Percentage of population
Boulder Island	3.45 seals	5	17.27	0.24
Flapjack Island	10.10 seals	5	50.50	0.70
Geikie Rock	9.58 seals	5	47.92	0.66
Lone Island	18.63 seals	** 9	167.73	2.33
Total	283	3.93

* Data from 2015–2017 NPS gull surveys (NPS 2015b; NPS 2016; NPS 2017).

** Number includes four additional days for climate monitoring activities.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking” for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned) and;

(2) the practicability of the measures for applicant implementation, which

may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NPS has based the mitigation measures which they propose to implement during the proposed research, on the following: (1) Protocols used during previous gull research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Womble *et al.* (2013a); Richardson *et al.* (1995); and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic and visual stimuli associated with gull and climate monitoring activities within GBLA NP, park personnel have proposed to implement the following mitigation measures for marine mammals:

¹ See Table 3 for NMFS’ three-point scale that categorizes pinniped disturbance reactions by

severity. NMFS only considers responses falling

into Levels 2 and 3 as harassment (Level B Take) under the MMPA.

Pre-Survey Monitoring

Prior to deciding to land onshore to conduct gull and climate monitoring, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled-out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. If offshore predators, harbor seal pups of less than one week of age, or Steller sea lions are observed, researchers will follow the protocols for site avoidance discussed below. If neither of these instances occur, researchers will then perform a controlled landing on the survey site.

Site Avoidance

If a harbor seal pup less than one week old or a harbor seal predator (*i.e.* killer whale) is observed near or within the action area, researchers will not go ashore to conduct the gull or climate monitoring activities. Also, if Steller sea lions are observed within or near the study site, researchers will maintain a distance of at least 100 m from the animals at all times.

Controlled Landings

The researchers would determine whether to approach the island based on type of animals present. Researchers would approach the island by motorboat at a speed of approximately 2 to 3 kn (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic (flushing). The researchers would also select a pathway of approach farthest from the hauled-out harbor seals to minimize disturbance.

Minimize Predator Interactions

If the researchers visually observe marine predators (*i.e.*, killer whales) present in the vicinity of hauled-out marine mammals, the researchers would not approach the study site.

Disturbance Reduction Protocols

While onshore at study sites, the researchers would remain vigilant for hauled-out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

Mitigation Conclusions

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures

provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

NPS proposes to conduct marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring and to gain a better understanding of marine mammals and their impacts to the project's activities. The researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations of pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances follows those in Mortenson (1996). NPS would record disturbances on a three-point scale that represents an increasing seal response to the disturbance (Table 3). NPS will record the time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out.

Previous Monitoring Results

NPS has complied with the monitoring requirements under the previous authorizations. NMFS posted the 2017 report on our Web site at www.nmfs.noaa.gov/pr/permits/incidental/research.htm and the results from the previous NPS monitoring reports support our findings that the proposed mitigation measures required under the 2014–2017 Authorizations provide the means of effecting the least practicable impact on the species or stock. During the last 3 years of this activity, approximately a third of all observed harbor seals have flushed in response to these activities (37 percent in 2015, 37 percent in 2016, and 38 percent in 2017). The following narratives provide a detailed account of each of the past 3 years of monitoring (Summarized in Table 6):

In 2017, of the 86 harbor seals that were observed: 33 flushed in to the water, 0 became alert but did not move >1 m, and 0 moved >1 m but did not flush into the water. In all, no harbor seal pups were observed. On two occasions, harbor seals were flushed into the water when islands were accessed for gull surveys. In these instances, the vessel approached the island at a very slow speed and most of the harbor seals flushed into the water at approximately 150–185 m. On two events, harbor seals were observed hauled out on Boulder Island and not disturbed due to their distance from the survey area. In addition, during two pre-

monitoring surveys conducted for Lone Island, harbor seals were observed hauled out and the survey was not conducted to prevent disturbance of harbor seals.

In 2016, of the 216 harbor seals that were observed: 77 flushed in to the water; 3 became alert but did not move >1 m, and 17 moved >1 m but did not flush into the water. On five occasions, harbor seals were flushed into the water when islands were accessed for gull surveys. In these instances, the vessel approached the island at a very slow speed and most of the harbor seals flushed into the water at approximately

50–100 m. In four instances, fewer than 25 harbor seals were present, but in one instance, 41 harbor seals were observed flushing into the water when NPS first saw them as they rounded a point of land in kayaks accessing Flapjack Island. In five instances, harbor seals were observed hauled out and not disturbed due to their distance from the survey areas.

In 2015, of the 156 harbor seals that were observed: 57 flushed in to the water; 25 became alert but did not move >1 m, and zero moved >1 m but did not flush into the water. No pups were observed. On 2 occasions, harbor seals

were observed at the study sites in numbers <25 and the islands were accessed for gull surveys. In these instances, the vessel approached the island at very slow speed and most of the harbor seals flushed into water at approximately 200 m (Geikie 8/5/15) and 280 m (Lone, 8/5/15). In one instance (Lone, 6/11/15), NPS counted 20 harbor seals hauled out during our initial vessel-based monitoring, but once on the island, NPS observed 33 hauled out seals. When NPS realized the number of seals present, they ceased the survey and left the area, flushing 13 seals into the water.

TABLE 6—SUMMARY TABLE OF 2015–2017 MONITORING REPORTS FOR NPS GULL STUDIES

Monitoring year	Number of adults observed	Number of pups observed	Flushed into water	Moved >1 m but did not flush	Alert but did not move >1 m
2017	86	0	33	0	0
2016	216	1	77	3	17
2015	156	0	57	0	25

Coordination

NPS can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up. NPS actively monitors harbor seals at breeding and molting haul-out locations to assess trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.* 2010, Womble and Gende, 2013b). This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the Alaska Fisheries Science Center. NPS will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. NPS will coordinate with state and Federal marine mammal biologists to determine what additional data or observations may be useful for monitoring marine mammals and haul-outs in GLBA NP. Additionally, NPS would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and Federal agencies.

Reporting

NPS will submit a draft monitoring report to NMFS no later than 90 days after the expiration of the Incidental

Harassment Authorization or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization. NPS will submit a final report to NMFS within 30 days after receiving comments on the draft report. If NPS receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities;
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;
3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities; and
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner

prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), NPS shall immediately cease the specified activities and immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including tide level if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

NPS shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NPS may not resume their activities until notified by us via letter, email, or telephone.

In the event that NPS discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the

next paragraph), NPS will immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with NPS to determine whether modifications in the activities are appropriate.

In the event that NPS discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NPS will report the incident to the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator within 24 hours of the discovery. NPS researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. NPS can continue their research activities.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status

of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Due to the project's minimal levels of visual and acoustic disturbance, NMFS does not expect NPS's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality. Additional factors for our Negligible Impact Determination are listed below:

- The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities;
- The proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or pupping and would not adversely impact marine mammal habitat;
- The proposed activities will affect a small portion of harbor seal habitat within GLBA NP for only a short amount of time. This, combined with a large availability of alternate areas for pinnipeds to haul out enables the seals to effectively avoid disturbances from research operations;
- Anecdotal observations and results from previous monitoring reports show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after NPS conducted their research activities; and
- Harbor seals may flush in the water despite researchers best efforts to keep calm and quiet around seals; however, injury or mortality has never been documented nor is anticipated from flushing events. Researchers would approach study sites slowly to provide enough time for any marine mammals present to slowly enter the water without panic.

As stated, NMFS does not anticipate any injuries, serious injuries, or mortalities to result from NPS's proposed activities and we do not propose to authorize injury, serious injury, or mortality. Harbor seals may exhibit behavioral modifications, including temporarily vacating the area during the proposed gull and climate research activities to avoid human disturbance. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or pupping and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not

expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual gull monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during NPS' research activities would be behavioral harassment of limited duration (*i.e.*, up to two hours per visit) and limited intensity (*i.e.*, temporary flushing at most).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As mentioned previously, NMFS estimates that NPS' activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (3.93 percent, see Table 4) relative of the Glacier Bay/Icy Strait stock of harbor seals (7,210 seals, see Table 1). In addition to this, there is a high probability that repetitive takes of the same animal may occur which reduces the percentage of population even further.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. NPS prohibits subsistence harvest of harbor seals within the GLBA NP (Catton, 1995). Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with Alaska Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the National Park Service for conducting gull and climate monitoring activities at GLBA NP from March 1 2018 to February 29 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains

a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for a period of one year from March 1 2018 to February 28 2019.

2. This Authorization is valid only for research activities that occur at the following locations: Boulder, Flapjack, and Lone Islands, and Geikie Rock in GLBA NP, Alaska.

3. General Conditions

(a) A copy of this IHA must be in the possession of NPS, its designees, and field crew personnel (including research collaborators) operating under the authority of this IHA at all times.

(b) The species authorized for taking are Alaskan harbor seals (*Phoca vitulina richardii*).

(c) The taking, by Level B harassment only, is limited to 283 harbor seals (*Phoca vitulina richardii*).

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The NPS may conduct a maximum of five days of gull monitoring for each survey location listed in this IHA. In addition, the NPS may conduct a maximum of four days of activities related to climate monitoring on Lone Island.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) Conduct pre-survey monitoring before deciding to access a study site;

(b) Prior to deciding to land onshore of Boulder, Lone, or Flapjack Islands or Geikie Rock, the Holder of this Authorization shall use high-powered image stabilizing binoculars before

approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled-out marine mammals;

(c) During pre-survey monitoring vessels shall maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline;

(d) If the Holder of the Authorization determines that a harbor seal pup less than one week of age is present within or near a study site or a path to a study site, the Holder shall not access the island and nor conduct the study at that time. In addition, if during the activity, a pup less than one week of age is observed, all research activities shall conclude for the day;

(e) Maintain a distance of at least 100 m from any Steller sea lion;

(f) The NPS shall perform controlled and slow ingress to islands where harbor seals are present;

(g) NPS shall select a pathway of approach farthest from the hauled-out harbor seals to minimize disturbance;

(h) The NPS shall monitor for offshore predators at the study sites and shall avoid research activities when killer whales (*Orcinus orca*) or other predators are present; and

(i) The NPS shall maintain a quiet working atmosphere, avoid loud noises, and shall use hushed voices in the presence of hauled-out pinnipeds.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during gull and climate monitoring activities. Monitoring and reporting shall be conducted in accordance with the following: NPS and/or its designees shall record the following:

(a) Species counts (with numbers of adults/juveniles); and Numbers of disturbances, by species and age, according to a three-point scale of intensity (Table 7) including:

TABLE 7—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts shall be recorded, but not counted as a 'take'.
	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
	Flush	All retreats (flushes) to the water.

(b) Information on the weather, including the tidal state and horizontal visibility;

(c) The observer shall note the presence of any offshore predators (date, time, number, and species); and

(d) The observer shall note observations (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up

research can be conducted by the appropriate personnel, (2) marked or tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies, and (3) any rare or unusual species of marine mammal for agency follow-up. The observer shall report that information to NMFS' Alaska Fisheries Science Center at (206) 526-4045 and/or the Alaska Department of Fish and Game Marine Mammal Program at *shawna.karpovich@alaska.gov* (harbor seals) *dfa.dwc.sealions@alaska.gov* (Steller sea lions), or *lori.quakenbush@alaska.gov* (Whales).

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of marine mammal monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in Monitoring Section of this IHA;

(b) Reporting injured or dead marine mammals;

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, NPS shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301-427-8440), NMFS, and the Alaska Regional Stranding Coordinator (877-925-7773), NMFS. The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA

compliance. NPS may not resume their activities until notified by NMFS;

(ii) In the event that NPS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), NPS shall immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NPS to determine whether additional mitigation measures or modifications to the activities are appropriate; and

(iii) In the event that NPS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NPS shall report the incident to the Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator, NMFS, within 24 hours of the discovery. NPS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed action. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: November 28, 2017.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2017-25910 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF766

Atlantic Highly Migratory Species; Advisory Panel for Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; nominations for shark stock assessment Advisory Panel.

SUMMARY: NMFS solicits nominations for the "SEDAR Pool," also known as the Advisory Panel for Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops. The SEDAR Pool is comprised of a group of individuals who may be selected to consider data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a 5-year appointment (2018–2023). Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before January 2, 2018.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email:* SEDAR.pool@noaa.gov.
- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: "SEDAR Pool Nomination."
- *Fax:* 301-713-1917.

Additional information on SEDAR and the SEDAR guidelines can be found at <http://www.sefsc.noaa.gov/sedar/>. The terms of reference for the SEDAR Pool, along with a list of current members, can be found at <http://www.nmfs.noaa.gov/sfa/hms/SEDAR/SEDAR.htm>.

FOR FURTHER INFORMATION CONTACT:

Delisse Ortiz, (240-681-9037) or Karyl Brewster-Geisz, (301) 425-8503.

SUPPLEMENTARY INFORMATION:

Background

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, states that each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. For the purposes of this section, NMFS applies the above Council provision to Atlantic highly migratory species management (see Section 304(g)(1) of the Magnuson-Stevens Act, which provides that the Secretary will prepare fishery management plans for HMS and consult with Advisory Panels under section 302(g) for such FMPs). As such, NMFS has established the SEDAR Pool under this section. The SEDAR Pool currently consists of 26 individuals, each of whom may be selected to review data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool was created specifically for Atlantic oceanic sharks, it may be expanded to include other HMS, as needed.

The primary purpose of the individuals in the SEDAR Pool is to review, at SEDAR workshops, the scientific information (including but not limited to data and models) used in stock assessments that are used to advise NMFS, as a delegate to the Secretary of Commerce (Secretary), about the conservation and management of Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool, if selected, may participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. In order to ensure that the peer review is unbiased, individuals who participated in a data and/or assessment workshop for a particular stock assessment will not be allowed to serve as reviewers for the same stock assessment. However, these individuals may be asked to attend the review workshop to answer specific questions from the reviewers concerning the data and/or assessment workshops. Members of the SEDAR Pool may serve as members of other Advisory Panels concurrent with, or following, their service on the SEDAR Pool.

Procedures and Guidelines

A. Participants

The SEDAR Pool is comprised of individuals representing the commercial and recreational fishing communities for Atlantic sharks, the environmental

community active in the conservation and management of Atlantic sharks, and the academic community that have relevant expertise either with sharks and/or stock assessment methodologies for marine fish species. Also, individuals who may not necessarily work directly with sharks, but who are involved in fisheries with similar life history, biology and fishery issues may be part of the SEDAR Pool. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined or limited.

Additional members of the SEDAR Pool may also include representatives from each of the five Atlantic Regional Fishery Management Councils, each of the 18 Atlantic states, both the U.S. Virgin Islands and Puerto Rico, and each of the interstate commissions: The Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

If NMFS requires additional members to ensure a diverse pool of individuals for data or assessment workshops, NMFS may request individuals to become members of the SEDAR Pool outside of the annual nomination period.

SEDAR Pool members serve at the discretion of the Secretary. Not all members will attend each SEDAR workshop. Rather, NMFS will invite certain members to participate at specific stock assessment workshops dependent on their ability to participate, discuss, and recommend scientific decisions regarding the species being assessed.

NMFS is not obligated to fulfill any requests (*e.g.*, requests for an assessment of a certain species) that may be made by the SEDAR Pool or its individual members. Members of the SEDAR Pool who are invited to attend stock assessment workshops will not be compensated for their services but may be reimbursed for their travel-related expenses to attend such workshops.

B. Nomination Procedures for Appointments to the SEDAR Pool

Member tenure will be for 5 years. Nominations are sought for terms beginning early in 2018 and expiring in 2023. Nomination packages should include:

1. The name, address, phone number, and email of the applicant or nominee;
2. A description of the applicant's or nominee's interest in Atlantic shark

stock assessments or the Atlantic shark fishery;

3. A statement of the applicant's or nominee's background and/or qualifications; and

4. A written commitment that the applicant or nominee shall participate actively and in good faith in the tasks of the SEDAR Pool, as requested.

C. Meeting Schedule

Individual members of the SEDAR Pool meet to participate in stock assessments at the discretion of the Office of Sustainable Fisheries, NMFS. Stock assessment timing, frequency, and relevant species will vary depending on the needs determined by NMFS and SEDAR staff. In 2018, NMFS intends to update the Gulf of Mexico blacktip shark stock assessment. In 2019, NMFS intends to conduct a benchmark assessment for Atlantic blacktip sharks. During an assessment year, meetings and meeting logistics will be determined according to the SEDAR Guidelines. All meetings are open for observation by the public.

Dated: November 27, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017-25872 Filed 11-30-17; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: Date added to the Procurement List: December 31, 2017.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, telephone: (703) 603-7740, fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 7/1/2016 (81 FR, No. 127), 10/20/2017 (82 FR, No. 202), and 10/27/2017 (82 FR, No. 207), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the products and services to the Government.
2. The action will result in authorizing small entities to provide the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN—Product Name: 2540–00–678–3469—Chock, Wheel-Track, Wood, 9.5" x 8"

Mandatory Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK

Mandatory for: 100% of the requirement of the Department of Defense

Contracting Activity: Defense Logistics Agency Land and Maritime

NSNs—Product Names:

- 5180–00–NIB–0002—Evidence Kit, Individual Point of Capture
- 5180–00–NIB–0003—Evidence Kit, Leader Point of Capture
- 5180–00–NIB–0004—Evidence Kit, Team Evidence Collection
- 5180–00–NIB–0005—Evidence Kit, Platoon Evidence Collection

Mandatory Source of Supply: Industries for the Blind, Inc., West Allis, WI

Mandatory for: 100% of the requirement of the U.S. Army

Contracting Activity: DEPT OF THE ARMY, W4GG HQ US ARMY TACOM

Services

Service Type: Janitorial Service

Mandatory for: Federal Aviation

Administration, Albany System Service Center, Albany ATCT & Base Building, 2415 Tower Lane, Albany, GA

Mandatory Source of Supply: Power Works Industries, Inc., Columbus, GA

Contracting Activity: FEDERAL AVIATION ADMINISTRATION

Service Type: Custodial Service

Mandatory for: U.S. Army Reserve, Melvin Y Mora USARC, Bldgs. 30, 40, 41 & 44, 191 Soldiers Drive, St. Charles, MO

Mandatory Source of Supply: MGI Services Corporation, St. Louis, MO

Contracting Activity: DEPT OF THE ARMY, W6QM MICC FT MCCOY (RC)

Deletions

On 10/10/2017 (82 FR, No. 194), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

Accordingly, the following products are deleted from the Procurement List:

End of Certification

Accordingly, the following products are deleted from the Procurement List:

*Products**NSNs—Product Names:*

- 6532–00–159–4881—Smock, Mans Dental Operating
- 6532–00–926–9964—Smock, Mans Dental Operating
- 6532–00–926–9975—Smock, Mans Dental Operating
- 6532–00–926–9976—Smock, Mans Dental Operating

Mandatory Source of Supply: Human Technologies Corporation, Utica, NY

Contracting Activity: Defense Logistics Agency Troop Support

NSNs—Product Names:

- 5510–00–NSH–0044—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0045—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0046—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0047—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0048—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0049—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0050—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0051—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0052—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0053—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0054—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0055—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0056—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0057—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0058—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0059—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0060—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0061—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0062—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0063—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0064—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0065—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0066—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0067—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0068—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0069—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0070—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0071—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0072—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0073—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0074—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0075—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0076—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0077—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0078—Stakes/Lath, Survey, Wood
- 5510–00–NSH–0079—Stakes/Lath, Survey, Wood

5510-00-NSH-0080—Stakes/Lath, Survey, Wood
 5510-00-NSH-0081—Stakes/Lath, Survey, Wood
 5510-00-NSH-0082—Stakes/Lath, Survey, Wood
 5510-00-NSH-0083—Stakes/Lath, Survey, Wood
 5510-00-NSH-0084—Stakes/Lath, Survey, Wood
 5510-00-NSH-0085—Stakes/Lath, Survey, Wood
 5510-00-NSH-0086—Stakes/Lath, Survey, Wood
 5510-00-NSH-0087—Stakes/Lath, Survey, Wood
 5510-00-NSH-0088—Stakes/Lath, Survey, Wood
 5510-00-NSH-0089—Stakes/Lath, Survey, Wood
 5510-00-NSH-0090—Stakes/Lath, Survey, Wood
 5510-00-NSH-0091—Stakes/Lath, Survey, Wood
 5510-00-NSH-0092—Stakes/Lath, Survey, Wood
 5510-00-NSH-0093—Stakes/Lath, Survey, Wood
 5510-00-NSH-0094—Stakes/Lath, Survey, Wood
 5510-00-NSH-0095—Stakes/Lath, Survey, Wood
 5510-00-NSH-0096—Stakes/Lath, Survey, Wood
 5510-00-NSH-0097—Stakes/Lath, Survey, Wood
 5510-00-NSH-0101—Stakes/Lath, Survey, Wood
 5510-00-NSH-0102—Stakes/Lath, Survey, Wood
 5510-00-NSH-0103—Stakes/Lath, Survey, Wood
 5510-00-NSH-0104—Stakes/Lath, Survey, Wood
 5510-00-NSH-0105—Stakes/Lath, Survey, Wood
 5510-00-NSH-0106—Stakes/Lath, Survey, Wood

Mandatory Source of Supply: Siskiyou Opportunity Center, Inc., Mt. Shasta, CA
Contracting Activity: FOREST SERVICE, KLAMATH NATIONAL FOREST
NSN—Product Name: 8470-00-NSH-0030—Improved Oxygen Harness
Mandatory Source of Supply: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2017-25854 Filed 11-30-17; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Open to the public on Thursday, January 4, 2018, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Captain Edward C. Norton, United States Navy, Designated Federal Official, Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042-5101. Email Address: dha.ncr.health-it.mbx.baprequests@mail.mil.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of the Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
 - a. Weight Loss Agents
 - b. Oncological Agents: Multiple Myeloma
 - c. Prenatal Vitamins
4. Newly Approved Drugs Review
5. Pertinent Utilization Management Issues
6. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first

220 people signing-in. All persons must sign-in legibly.

Written Statements: Pursuant to 41 CFR 102-3.140, the public or interested organizations may submit written statements to the membership of the Panel about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained in the **FOR FURTHER INFORMATION CONTACT** section.

Written comments or statements must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Panel for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to all the committee members.

Dated: November 28, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-25899 Filed 11-30-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of a Pilot Program on Medication Therapy Management Under the TRICARE Program

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of a Pilot Program.

SUMMARY: Per Section 726 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, the Department of Defense (DoD) is implementing a 2-year Pilot Program, "Pilot Program on Medication Therapy Management Under TRICARE Program". The Pilot Program will provide Medication Therapy Management (MTM) services to promote adherence and improve medication-related health outcomes for TRICARE beneficiaries (Beneficiaries) with more than one chronic medical condition and taking more than one medication. The Pilot Program will be conducted in three types of pharmacy settings. The intent of this Pilot Program is to evaluate the feasibility and desirability of including MTM as part of the TRICARE Program.

DATES: The demonstration began on October 1, 2016, and will continue for no less than two years.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Bobb, Defense Health Agency,

J-3 Pharmacy Operations Division, telephone 703-681-2890.

SUPPLEMENTARY INFORMATION:

A. Background

Medicare Part D plans already provide MTM/clinical pharmacy services to Medicare beneficiaries at high risk of medication-related problems. The design of the DoD Pilot Program will consider best commercial practices in providing MTM services.

The value of including clinical pharmacists on the PCMH care team is well documented in the literature as delivering improved outcomes, better medication adherence, and supports the tenets of healthcare reform including enhanced access, improved quality, reduced cost, and enhanced patient safety.

Clinical pharmacists play a critical role in the success of care provided through the PCMH model. Utilizing clinical pharmacists has clearly shown the relationship between pharmacist involvement and positive patient outcomes especially in the optimization of medication therapy, medication adherence, and the reduction in polypharmacy users.

B. Description of the Pilot Program

Services will be offered by pharmacists at three different location types: (1) MTFs with a pharmacist embedded supporting a PCMH, (2) MTF pharmacies for beneficiaries who receive primary care services from providers outside an MTF but bring their prescriptions to the MTF pharmacy, and (3) pharmacies other than an MTF. MTM involves a pharmacist in the review of prescription history where the pharmacist works with the patient and their primary care provider to develop action plans for any medication-related problems. The overall goal of MTM is to open a dialogue with beneficiaries and include them in medication-related decision-making to optimize drug therapy, reduce medication-related problems, improve adherence to therapy, and improve health outcomes. As stated in Section 726, NDAA FY15, the 2-year pilot program's target population will be beneficiaries who have more than one chronic medical condition and are taking more than one medication.

This pilot program will focus specifically on beneficiaries diagnosed with at least three chronic medical conditions and taking multiple medications. The following chronic medical conditions will be considered for this pilot: Alzheimer's disease, Chronic Heart Failure, Diabetes, Dyslipidemia, End-Stage Renal Disease,

Hypertension, Respiratory Disease (Asthma, Chronic Obstructive Pulmonary Disease [COPD]), Rheumatoid Arthritis, Post-Traumatic Stress Syndrome, Depression, and Polypharmacy. This is consistent with the intent of Section 726, NDAA FY 2015 of more than one chronic medical condition and taking more than one medication. Each site within the three location types will target an enrollment of 400 beneficiaries over at least 12 months, but not to exceed 24 months, providing up to 6 hours of contact per beneficiary per year.

Selection for Location Type 1 will be from the existing PCMH empaneled population. MTM services will be provided by a pharmacist embedded in the PCMH. The following facilities will be included in the pilot program for Location Type 1: Fort Campbell, Naval Station Mayport, and Hill Air Force Base.

Location Type 2 will include beneficiaries who use MTF pharmacies but receive medical care from providers in the purchased care sector. Beneficiaries will be notified of their eligibility to participate in the Pilot Program, and may choose to accept or decline participation. Beneficiaries participating in the Pilot Program at this location type generally do not receive primary care services from health care providers at MTFs. The following facilities will be included in the pilot program for Location Type 2: Fort Campbell, Marine Corps Base Camp Pendleton, and Patrick Air Force Base.

Location Type 3 will provide MTM services for beneficiaries receiving medical and pharmaceutical care outside of an MTF. Beneficiaries will be notified of their eligibility to participate in the Pilot Program, and may choose to accept or decline participation. The following areas will be included in the pilot program for Location Type 3: Denver, Colorado, Orlando, Florida, and Houston, Texas.

MTM services will be provided by a pharmacist to beneficiaries empaneled in the pilot program. Appointments will be conducted face to face, over the telephone, and/or by video conferencing. MTM services will include a Comprehensive Medication Review (CMR) consisting of an assessment of the beneficiary's medication regimen, a comprehensive record of medications, a collaborative care agreement between the beneficiary and the pharmacist, communication with the beneficiary's healthcare providers, and documentation with follow up. CMR is conducted at the initial visit and annually thereafter. Interim Targeted Medication Reviews

are offered quarterly to monitor unresolved issues requiring attention and to determine if new drug therapy problems have arisen. The pharmacist, in consultation with the beneficiary, reviews pertinent medical and prescription history and develops action plans to address medication-related problems.

C. Evaluation

The effect of MTM services on beneficiary use and outcomes of prescription medications and the cost of health care will be evaluated using established DoD metrics of Per Member Per Month (PMPM) and Pharmacy PMPM. Additional measures may include a review of changes in utilization of the emergency department, hospitalization rates and readmission rates. Beneficiary use and outcomes of prescription medications will assess medication adherence and disease related outcomes measures, when available.

A report to Congress is required not later than 30 months after the start of the Pilot.

Dated: November 27, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-25823 Filed 11-30-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Notice Inviting Statements of Interest From Nonprofit Organizations Interested in Partnering To Expand the #GoOpen Network

AGENCY: Office of the Secretary, Department of Education.

ACTION: Notice.

SUMMARY: The Department through the Office of the Secretary's Office of Educational Technology (OET) created the #GoOpen Network in October of 2015, to support the use of openly licensed educational resources, by establishing a network of mentoring relationships with experienced districts and States providing support to those districts that were new to the use of open resources. To support this work, OET is seeking to select and partner with a nonprofit organization or a consortium of nonprofit organizations to further expand and enhance the network. Thus, this notice outlines the criteria to be used for selecting partner organizations; invites statements of interest from nonprofit organizations interested in partnering to build on and expand the #GoOpen network; and

announces the date by which organizations must submit these statements of interest in order to be considered for selection.

A call for statements of interest was first published in the blog post *#GoOpen: More than a Hashtag* on May 10, 2017. We are publishing a new request for statements of interest through this **Federal Register** notice in order to more widely publicize the call and reach a broader group of interested stakeholder organizations. Respondents to the previous call through the blog are encouraged to reapply by submitting a statement of interest in accordance with this notice; prior statements will not be considered.

DATES: Deadline for transmittal of statements of interest: January 16, 2018.

ADDRESSES: Submit your statement of interest electronically to tech@ed.gov with the subject line “#GoOpen Statement of Interest.”

FOR FURTHER INFORMATION CONTACT: Sara Trettin, U.S. Department of Education, 400 Maryland Avenue SW., Room 11152, Washington, DC 20202-7240. Telephone: (202) 453-6604 or by email: tech@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department of Education’s #GoOpen movement supports States and districts choosing to transition to the use of openly licensed educational resources by establishing a network of mentoring relationships between experienced districts and States and those new to the use of open educational resources.¹ #GoOpen States and districts are sharing new approaches to professional learning for teachers, developing systems for tagging and curating resources that offer students and teachers options for personalizing learning, and building robust technology infrastructure to support curating, creating, adapting and sharing openly licensed educational resources. To date, #GoOpen has a network of 20 States and 114 districts committed to documenting and sharing their implementation strategies and partnering with committed nonprofit organizations, policymakers, foundations, and private-sector companies. The #GoOpen movement and the growing network of States, districts, and educators has not only

provided a space for robust discussions about the merits of openly licensed educational resources but also supported broader dialogue and dissemination of information on the policies and practices that impact teaching, learning, and collaboration.

OET is interested in working with one or more nonprofit organizations or a consortium of nonprofit organizations to build on and expand the #GoOpen network. In addition to connecting additional States and districts to #GoOpen, the partnership will (1) engage education leaders across a network of States and districts to form regional communities of practice; (2) facilitate the sharing of openly licensed educational resources including those that are accessible (e.g., text to speech, captioning and highlighting features, embedded videos, font and size choices) and the dissemination of promising practices in teaching and learning; and (3) integrate evidence of the efficacy of openly licensed resources into the broader education policy dialogue.

Criteria for Partner Organization(s): The organization(s) best suited to helping the Department build on and expand the #GoOpen network must be an existing nonprofit organization(s):

(a) With experience assisting educators, such as teachers, district leaders, superintendents, and other educational resource and technology staff, in selecting and implementing a variety of digital and non-digital learning strategies. The organization(s) must have specific expertise in providing assistance to stakeholders with respect to sharing, using, and collaborating on the use of open educational resources using a variety of digital learning platforms. In addition, the organization(s) must have a positive record of leading or coordinating discussions on a range of education policy issues, especially related to the promise and perils of digital learning and increasing educational opportunity for an increasingly diverse student population, including children with disabilities who can use or require technology accommodations;

(b) That commits to collaborate with OET in providing leadership in the development of regional communities of practice and building networks of impact comprising a strong and diverse consortium of committed partner organizations. The organization(s) must coordinate with OET to (1) design the structure of the expanded #GoOpen network; (2) in collaboration with OET, design, develop, and lead outreach activities geared toward developing a coalition of local leaders and regional communities of practice; (3) create

experiences (e.g. in-person and virtual professional learning opportunities, etc.) that encourage States, districts, and educators to build on initial commitments; (4) capture and share promising practices; (5) integrate evidence of the efficacy of openly licensed resources into the broader education policy dialogue; and (6) advance the education policy dialogue (e.g. through articles, presentations, etc.) on the use of technology to transform learning; and

(c) With the resources necessary to support its own activities during this partnership. OET will not provide funding for organization(s) in this partnership.²

Submission Requirements: Interested organizations must submit a statement of interest that describes:

(a) The organization’s experience assisting educators in selecting and implementing digital and non-digital learning strategies;

(b) The organization’s expertise in providing assistance to stakeholders with respect to sharing, using, and collaborating on the use of open educational resources using a variety of digital learning platforms;

(c) The organization’s record of leading or coordinating discussion on a range of education policy issues;

(d) The organization’s commitment to collaborate with OET in providing leadership in the development of regional communities of practice and building networks of impact comprising a strong and diverse consortium of committed partner organizations;

(e) A possible design for the structure of the expanded #GoOpen network;

(f) The organization’s role and approach to scaling the #GoOpen movement through regional communities of practice;

(g) The organization’s approach to creating experiences that encourage States, districts, and educators to build on initial commitments and capturing and sharing promising practices;

(h) The organization’s strategy to integrate evidence of the efficacy of openly licensed resources into the broader education policy dialogue and advance the education policy dialogue on the use of technology to transform learning;

(i) How the organization will support its own activities during this partnership;

(j) Any other information relevant to the organization’s experience in education or technology policy; and how it might carry out the activities to

¹ Openly licensed educational resources, or open educational resources, are teaching, learning, and research resources that reside in the public domain or have been released under a license that permits their use, modification, and sharing with others.

² Note that this is not a notice inviting applications for any grant program.

partner with the Department and otherwise help to implement the #GoOpen network, and

(k) Contact information (name of the organization, address, contact person's name, email address etc.).

Each statement of interest will be evaluated by taking into account the submission requirements listed above.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 28, 2017.

Joe Conaty,

Office of the Secretary, Acting Director for the Office of Educational Technology.

[FR Doc. 2017-25913 Filed 11-30-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2017-ICCD-0146]

Agency Information Collection Activities; Comment Request; Survey of Postgraduate Outcomes for the Foreign Language and Area Studies (FLAS) Fellowship Program (Tracking Survey)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before January 30, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2017-ICCD-0146. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-34, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sara Starke, 202-453-7681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Outcomes for the Foreign

Language and Area Studies (FLAS) Fellowship Program (Tracking Survey).
OMB Control Number: 1840-0829.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,400.

Total Estimated Number of Annual Burden Hours: 600.

Abstract: This survey is used by the Foreign Language and Area Studies (FLAS) grantee institutions and fellows to comply with 20 U.S.C. 1121(d). Fellows complete the survey online, and the Department accesses and reports on the collected data regarding fellows' postgraduate employment. The survey is required by statute.

Dated: November 28, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-25918 Filed 11-30-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2017-ICCD-0147]

Agency Information Collection Activities; Comment Request; Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program (Tracking Survey)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 30, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2017-ICCD-0147. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by

postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-34, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sara Starke, 202-453-7681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program (Tracking Survey).

OMB Control Number: 1840-NEW.
Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 90.

Total Estimated Number of Annual Burden Hours: 23.

Abstract: This survey will be used by the Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) grantee institutions and fellows to provide information used by the Department in responding to DDRA GPR performance and efficiency measures. Fellows will

complete the survey online, and the Department will access and report on the collected data regarding fellows' postgraduate employment. The survey is necessary in order to respond to GPR.

Dated: November 28, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-25919 Filed 11-30-17; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9036-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www2.epa.gov/nepa/>.

Weekly receipt of Environmental Impact Statements (EISs)
Filed 11/20/2017 Through 11/24/2017
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search>.

EIS No. 20170234, Final, USMC, DC, Multiple Projects in Support of Marine Barracks Washington, DC, Review Period Ends: 01/02/2018, Contact: Ms. Julie Darsie (202) 685-1754.

EIS No. 20170235, Final Supplement, FTA, CA, Westside Purple Line Extension Section 4(f) Evaluation, Review Period Ends: 01/02/2018, Contact: Mary Nguyen 2132023960.

Dated: November 28, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017-25907 Filed 11-30-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9971-29-OW]

Information Session; Implementation of the Water Infrastructure Finance and Innovation Act of 2014; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of November 14, 2017, concerning an information session planned on January 17, 2018 in Washington, DC from 9:00 a.m.–3:00 p.m. This document is being issued to correct an error of the time zone. The purpose the session is to provide prospective borrowers with a better understanding of the Water Infrastructure Finance and Innovation Act (WIFIA) program requirements and application process.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, including registration information, contact Karen Fligger, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-2992; or email: WIFIA@epa.gov.

SUPPLEMENTARY INFORMATION:

What does this correction do?

In the **Federal Register** of November 14, 2017 (82 FR 52722) (FRL-9970-62-OW), FR Doc. 2017-24639, on page 52722, in the third column, under the heading **DATES**, the time zone is corrected to read: ET.

Authority: Water Infrastructure Finance and Innovation Act, 33 U.S.C. 3901 et seq.

Dated: November 16, 2017.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2017-25935 Filed 11-30-17; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10189, Rainier Pacific Bank, Tacoma, Washington

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Rainier Pacific Bank, Tacoma, Washington, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Rainier Pacific Bank on February 26, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after

the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 27, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017-25873 Filed 11-30-17; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2017.

A. Federal Reserve Bank of St. Louis
(David L. Hubbard, Senior Manager)

P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org;

1. *McGehee Bank Employee Stock Ownership Plan, McGehee, Arkansas*; to acquire additional voting shares for a total of 35 percent, of Southeast Financial Bankstock Corp., and thereby indirectly acquire shares of McGehee Bank, both of McGehee, Arkansas.

Board of Governors of the Federal Reserve System, November 28, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017-25908 Filed 11-30-17; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC-2017-0114, NIOSH-305]

Draft—National Occupational Research Agenda for Transportation, Warehousing and Utilities

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention announces the availability of a draft NORA Agenda entitled *National Occupational Research Agenda for Transportation, Warehousing and Utilities* for public comment. To view the notice and related materials, visit <https://www.regulations.gov> and enter CDC-2017-0114 in the search field and click "Search."

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Supplementary Information

Background

DATES: Electronic or written comments must be received by January 30, 2018.

ADDRESSES: You may submit comments, identified by CDC-2017-0114 and docket number NIOSH-305, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH

Docket Office, 1090 Tusculum Avenue, MS C-34, Cincinnati, Ohio 45226-1998.

Instructions: All submissions received in response to this notice must include the agency name and docket number [CDC-2017-0114; NIOSH-305]. All relevant comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, OH 45226-1998.

FOR FURTHER INFORMATION CONTACT:

Emily Novicki (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop E-20, 1600 Clifton Road NE., Atlanta, GA 30329, phone (404) 498-2581 (not a toll free number).

SUPPLEMENTARY INFORMATION: The National Occupational Research Agenda (NORA) is a partnership program created to stimulate innovative research and improved workplace practices. The national agenda is developed and implemented through the NORA sector and cross-sector councils. Each council develops and maintains an agenda for its sector or cross-sector.

Background: The National Occupational Research Agenda for Transportation, Warehousing and Utilities (TWU) is intended to identify the research, information, and actions most urgently needed to prevent occupational illnesses and injuries in the TWU sector. The National Occupational Research Agenda for TWU provides a vehicle for stakeholders to describe the most relevant issues, gaps, and safety and health needs for the sector. Each NORA research agenda is meant to guide or promote high priority research efforts on a national level, conducted by various entities, including: Government, higher education, and the private sector.

The first National Occupational Research Agenda for TWU was published in 2009 for the second decade of NORA (2006-2016). This draft is an updated agenda for the third decade of NORA (2016-2026). The revised agenda was developed considering new information about injuries and illnesses, the state of the science, and the probability that new information and approaches will make a difference. As the steward of the NORA process, NIOSH invites comments on the draft *National Occupational Research*

Agenda for TWU. Comments expressing support or with specific recommendations to improve the Agenda are requested. A copy of the draft Agenda is available at <https://www.regulations.gov> (see Docket Number CDC-2017-0114).

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2017-25876 Filed 11-30-17; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-P-4027]

Determination That METICORTEN (Prednisone) Tablets, 1 Milligram and 5 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that METICORTEN (prednisone) tablets, 1 milligram (mg) and 5 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT:

Meadow Platt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6228, Silver Spring, MD 20993-0002, 301-796-1830, Meadow.Platt@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants

do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

METICORTEN (prednisone) tablets, 1 mg and 5 mg, are the subject of NDA 09-766, held by Schering Corporation (Schering), and initially approved on February 21, 1955. METICORTEN is indicated for the following:

1. *Allergic states:* Control of severe or incapacitating allergic conditions intractable to adequate trials of conventional treatment in asthma, atopic dermatitis, contact dermatitis, drug hypersensitivity reactions, perennial or seasonal allergic rhinitis, serum sickness;

2. *Dermatologic diseases:* Bullous dermatitis herpetiformis, exfoliative erythroderma, mycosis fungoides, pemphigus, severe erythema multiforme (Stevens-Johnson syndrome);

3. *Endocrine disorders:* Primary or secondary adrenocortical insufficiency (hydrocortisone or cortisone is the drug of choice; synthetic analogs may be used in conjunction with mineralocorticoids where applicable; in infancy, mineralocorticoid supplementation is of particular importance), congenital adrenal hyperplasia, hypercalcemia associated with cancer, nonsuppurative thyroiditis;

4. *Gastrointestinal diseases:* To tide the patient over a critical period of the disease in regional enteritis and ulcerative colitis;

5. *Hematologic disorders:* Acquired (autoimmune) hemolytic anemia,

Diamond-Blackfan anemia, idiopathic thrombocytopenic purpura in adults, pure red cell aplasia, selected cases of secondary thrombocytopenia;

6. *Miscellaneous:* Trichinosis with neurologic or myocardial involvement, tuberculous meningitis with subarachnoid block or impending block when used with appropriate antituberculous chemotherapy;

7. *Neoplastic diseases:* For the palliative management of leukemias and lymphomas;

8. *Nervous system:* Acute exacerbations of multiple sclerosis; cerebral edema associated with primary or metastatic brain tumor, craniotomy, or head injury;

9. *Ophthalmic diseases:* Sympathetic ophthalmia, temporal arteritis, uveitis and ocular inflammatory conditions unresponsive to topical corticosteroids;

10. *Renal diseases:* To induce diuresis or remission of proteinuria in idiopathic nephrotic syndrome or that due to lupus erythematosus;

11. *Respiratory diseases:* Berylliosis, fulminating or disseminated pulmonary tuberculosis when used concurrently with appropriate antituberculous chemotherapy, idiopathic eosinophilic pneumonias, symptomatic sarcoidosis; and

12. *Rheumatic disorders:* As adjunctive therapy for short-term administration (to tide the patient over an acute episode or exacerbation) in acute gouty arthritis; acute rheumatic carditis; ankylosing spondylitis; psoriatic arthritis; rheumatoid arthritis, including juvenile rheumatoid arthritis (selected cases may require low-dose maintenance therapy). For the treatment of dermatomyositis, polymyositis, and systemic lupus erythematosus.

In a letter dated November 1, 2001, Schering requested withdrawal of NDA 09-766 for METICORTEN (prednisone). In the **Federal Register** of October 10, 2002 (67 FR 63107), FDA announced that it was withdrawing approval of NDA 09-766, effective November 12, 2002.

Strides Pharma, Inc., submitted a citizen petition dated July 1, 2017 (Docket No. FDA-2017-P-4027), under 21 CFR 10.30, requesting that the Agency determine whether METICORTEN (prednisone) tablets, 1 mg and 5 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that METICORTEN (prednisone) tablets, 1 mg and 5 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner

has identified no data or other information suggesting that these products were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of METICORTEN (prednisone) tablets, 1 mg and 5 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list METICORTEN (prednisone) tablets, 1 mg and 5 mg, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 27, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017-25900 Filed 11-30-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-6293]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on

FDA’s regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on January 11, 2018, from 8:30 a.m. to 4 p.m.

ADDRESSES: College Park Marriott Hotel and Conference Center, Chesapeake Ballroom, 3501 University Blvd. East, Hyattsville, MD 20783. The conference center’s telephone number is 301-985-7300. Answers to commonly asked questions about FDA Advisory Committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2017-N-6293. The docket will close on January 10, 2018. Submit either electronic or written comments on this public meeting by January 10, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 10, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of January 10, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before December 27, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2017-N-6293 for “Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20

and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, Fax: 301-847-8533, email: AMDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 210693, ciprofloxacin dispersion for inhalation, sponsored by Aradigm Corp., for the proposed indication of treatment of non-cystic fibrosis bronchiectasis patients with chronic lung infections with *Pseudomonas aeruginosa*.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the

location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before December 27, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 18, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 19, 2017.

Persons attending FDAs advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on

public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 24, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017-25911 Filed 11-30-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-6591]

**Barr Laboratories, Inc. et al.;
Withdrawal of Approval of 68
Abbreviated New Drug Applications**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 68 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of January 2, 2018.

FOR FURTHER INFORMATION CONTACT:

Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993-0002, 240-402-7945.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in table 1 in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

TABLE 1

Application No.	Drug	Applicant
ANDA 040135	Estropipate Tablets USP, 0.75 milligrams (mg), 1.5 mg, and 3 mg.	Barr Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 040755	Carisoprodol Tablets USP, 350 mg	Sun Pharmaceutical Industries, Ltd., c/o Sun Pharmaceutical Industries, Inc., 270 Prospect Plains Rd., Cranbury, NJ 08512.

TABLE 1—Continued

Application No.	Drug	Applicant
ANDA 062588	Gentamicin Sulfate in 0.9% Sodium Chloride Injection, Equivalent to (EQ) 1.2 mg base/milliliter (mL), EQ 1.4 mg base/mL, EQ 1.6 mg base/mL, EQ 1.8 mg base/mL, EQ 2 mg base/mL, EQ 60 mg base/100 mL, EQ 70 mg base/100 mL, EQ 80 mg base/100 mL, EQ 90 mg base/100 mL, and EQ 100 mg base/100 mL.	Hospira, Inc., a Pfizer Company, 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 062591	Kefurox (cefuroxime) for Injection USP, EQ 750 mg base/vial, EQ 1.5 grams (g) base/vial, and EQ 7.5 g base/vial.	ACS Dobfar S.p.A., c/o Interchem Corp., 120 Route 17 North, Paramus, NJ 07652.
ANDA 062756	Primaxin IV (imipenem and cilastatin) for Injection USP, 250 mg/vial; EQ 250 mg base/vial and 500 mg/vial; EQ 500 mg base/vial.	Merck Sharp & Dohme Corp., Subsidiary of Merck & Co., Inc., 1 Merck Dr., P.O. Box 100, Whitehouse Station, NJ 08889.
ANDA 063207	Cefazolin for Injection USP, EQ 1 g base/vial	Facta Farmaceutici S.p.A., c/o Interchem Corp., 120 Route 17 North, Suite 115, Paramus, NJ 07652.
ANDA 063209	Cefazolin for Injection USP, EQ 10 g base/vial and EQ 20 g base/vial (Pharmacy Bulk Package).	Do.
ANDA 063214	Cefazolin for Injection USP, EQ 500 mg base/vial	Do.
ANDA 063263	Amikacin Sulfate Injection USP, EQ 50 mg base/mL	Hospira, Inc.
ANDA 065268	Ceftriaxone for Injection USP, EQ 1 g base/vial and EQ 2 g base/vial.	Facta Farmaceutici S.p.A.
ANDA 065269	Ceftriaxone for Injection USP, EQ 10 g base/vial (Pharmacy Bulk Package).	Do.
ANDA 065348	Cefotaxime for Injection USP, EQ 10 g base/vial (Pharmacy Bulk Package).	Cephazone Pharma, LLC, 250 E. Bonita Ave., Pomona, CA 91767.
ANDA 065464	Cefoxitin for Injection USP, EQ 10 g base/vial (Pharmacy Bulk Package).	ACS Dobfar S.p.A.
ANDA 065467	Cefoxitin for Injection USP, EQ 1 g base/vial and EQ 2 g base/vial.	Do.
ANDA 070048	Cotrim D.S. (sulfamethoxazole and trimethoprim) Tablets USP, 800 mg/160 mg.	Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 070195	Valproic Acid Capsules USP, 250 mg	Catalent Pharma Solutions, LLC, 2725 Scherer Dr. North, St. Petersburg, FL 33716.
ANDA 070513	Tolazamide Tablets USP, 100 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 070514	Tolazamide Tablets USP, 250 mg	Do.
ANDA 071358	Tolazamide Tablets USP, 250 mg	Sun Pharmaceutical Industries, Inc., 270 Prospect Plains Rd., Cranbury, NJ 08512.
ANDA 071359	Tolazamide Tablets USP, 500 mg	Do.
ANDA 071667	Ibuprofen Tablets USP, 600 mg	Pliva, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 071668	Ibuprofen Tablets USP, 800 mg	Do.
ANDA 071735	Ibuprofen Tablets USP, 200 mg	Contract Pharmacal Corp., c/o SciRegs International Inc., 6333 Summercrest Dr., Columbia, MD 21045.
ANDA 071773	Ibuprofen Tablets USP, 200 mg	Pliva, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 073254	Loperamide Hydrochloride (HCl) Tablets USP, 2 mg	Contract Pharmacal Corp.
ANDA 074075	Clemastine Fumarate Syrup, EQ 0.5 mg base/5 mL	Actavis Mid Atlantic, LLC, Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 074536	Haloperidol Oral Solution USP, EQ 1 mg base/mL	Do.
ANDA 074782	Ibuprofen Capsules, 200 mg	Contract Pharmacal Corp.
ANDA 074789	Naproxen Sodium Tablets USP, EQ 200 mg base	Do.
ANDA 074931	Ibuprofen Tablets USP, 200 mg	Do.
ANDA 074961	Cimetidine Tablets USP, 200 mg	Do.
ANDA 074963	Cimetidine Tablets USP, 200 mg	Do.
ANDA 075094	Ranitidine Tablets USP, EQ 75 mg base	Do.
ANDA 075588	Ibuprofen and Pseudoephedrine HCl Tablets USP, 200 mg/30 mg.	Do.
ANDA 077058	Pantoprazole Sodium Delayed-Release Tablets USP, EQ 20 mg base and EQ 40 mg base.	Sun Pharmaceutical Industries, Ltd.
ANDA 077172	Ondansetron Injection USP, EQ 2 mg base/mL	Do.
ANDA 077329	Octreotide Acetate Injection, EQ 0.05 mg base/mL, EQ 0.1 mg base/mL, and EQ 0.5 mg base/mL.	Do.
ANDA 077330	Octreotide Acetate Injection, EQ 0.2 mg base/mL	Do.
ANDA 077331	Octreotide Acetate Injection, EQ 1 mg base/mL	Do.
ANDA 078108	Sertraline HCl Tablets, EQ 25 mg base, EQ 50 mg base, and EQ 100 mg base.	Do.
ANDA 078478	Torsemide Tablets, 5 mg, 10 mg, 20 mg, and 100 mg	Do.
ANDA 083000	Folic Acid Tablets, 1 mg	Ivax Pharmaceutical USA, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 085549	Reserpine, Hydralazine HCl, and Hydrochlorothiazide Tablets, 0.1 mg/25 mg/15 mg.	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 086109	Tolbutamide Tablets USP, 500 mg	Do.
ANDA 086577	Trimethobenzamide HCl Injection, 100 mg/mL	Do.

TABLE 1—Continued

Application No.	Drug	Applicant
ANDA 087191	Triamcinolone Acetonide Lotion USP, 0.025%	Alpharma U.S. Pharms, Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 087398	Spironolactone and Hydrochlorothiazide Tablets USP, 25 mg/25 mg.	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 088229	Thioridazine HCl Oral Solution USP, 100 mg/mL	Actavis Mid Atlantic, LLC, Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 088563	Thioridazine HCl Tablets USP, 50 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 088567	Thioridazine HCl Tablets USP, 25 mg	Do.
ANDA 088733	Meclizine HCl Tablets, 25 mg (Chewable)	Pliva, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 088869	Thioridazine HCl Tablets USP, 150 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 090800	Quinapril Tablets USP, EQ 5 mg base, EQ 10 mg base, EQ 20 mg base, and EQ 40 mg base.	Sun Pharmaceutical Industries, Ltd.
ANDA 091177	Anastrozole Tablets, 1 mg	Do.
ANDA 091466	Letrozole Tablets USP, 2.5 mg	Do.
ANDA 200486	Norethindrone and Ethinyl Estradiol Tablets USP, 0.5 mg/0.035 mg, 0.75 mg/0.035 mg, and 1 mg/0.035 mg.	Mylan Laboratories, Ltd., c/o Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504.
ANDA 200488	Norethindrone and Ethinyl Estradiol Tablets USP, 0.5 mg/0.035 mg.	Do.
ANDA 200489	Norethindrone and Ethinyl Estradiol Tablets USP, 1 mg/0.035 mg.	Do.
ANDA 201250	Vancomycin HCl for Injection USP, EQ 5 g base/vial and EQ 10 g base/vial (Pharmacy Bulk Package).	Teva Pharmaceuticals USA, Inc.
ANDA 201251	Vancomycin HCl for Injection USP, EQ 500 mg base/vial and EQ 1 g base/vial.	Do.
ANDA 201828	Norgestrel and Ethinyl Estradiol Tablets USP, 0.3 mg/0.03 mg.	Mylan Laboratories, Ltd.
ANDA 202203	Topotecan HCl for Injection, EQ 4 mg base/vial	Sun Pharmaceutical Industries, Ltd.
ANDA 202746	Zoledronic Acid Injection, EQ 4 mg base/5 mL	Sun Pharma Global FZE, c/o Sun Pharmaceutical Industries, Inc., 2 Independence Way, Princeton, NJ 08540.
ANDA 202875	Norgestrel and Ethinyl Estradiol Tablets USP, 0.5 mg/0.05 mg.	Mylan Laboratories, Ltd.
ANDA 203476	Zolmitriptan Tablets, 2.5 mg and 5 mg	Sun Pharma Global FZE.
ANDA 203685	Irbesartan Tablets USP, 75 mg, 150 mg, and 300 mg	Ajanta Pharma Ltd., c/o Ajanta Pharma USA, Inc., One Grande Commons, 440 US Highway 22 East, Suite 150, Bridgewater, NJ 08807.
ANDA 203838	Hydrocodone Bitartrate, Chlorpheniramine Maleate, and Pseudoephedrine HCl Oral Solution, 5 mg/4 mg/60 mg per 5 mL.	Tris Pharma, Inc., 2033 Route 130, Monmouth Junction, NJ 08852.
ANDA 203839	Hydrocodone Bitartrate and Pseudoephedrine HCl Oral Solution, 5 mg/60 mg per 5 mL.	Do.

Therefore, approval of the applications listed in table 1 of this document, and all amendments and supplements thereto, is hereby withdrawn as of January 2, 2018. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in table 1 that are in inventory on the date that this notice becomes effective (see the **DATES** section) may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: November 27, 2017.

Leslie Kux,

Associate Commissioner for Policy..

[FR Doc. 2017-25920 Filed 11-30-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Teleconference

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Dates and Times:

Tuesday, January 9, 2018: 9:00 a.m.–5:30 p.m. ET

Wednesday, January 10, 2018: 8:45 a.m.–3:00 p.m. ET

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Rm. 705A, Washington, DC 20201.

Status: Open.

Purpose: At the January 9–10, 2018 full meeting, the Committee will hear presentations, hold discussions on several health data policy topics and begin work on activities outlined in the NCVHS 2018 workplan. An environmental scan report will be reviewed and discussed by the full Committee as part of the Health Information Privacy and Security Beyond HIPAA project. This effort includes an exploration of challenges that extend beyond HIPAA and the range of policy options that may be available to the Department related to privacy, security and access measures to

protect individually identifiable health information in an environment of electronic networking and multiple uses of data. The Population Health Subcommittee will focus on Next Generation Vital Statistics in follow up to the hearing held September 11–12, 2017 and subsequent analyses conducted following the hearing. The purpose of the hearing was to assess the current state of the national vital statistics system (NVSS) to address concerns regarding sustainability and viability of the system infrastructure. Also addressed was the system's capacity to provide timely, high quality, secure vital administrative and statistical data for identity establishment and protection, identification of trends in disease and epidemics, *e.g.*, the recent surge in opioid-related deaths, and a host of critical uses for research, finance, planning, public records and services. The Committee will discuss concerns regarding decreased access to county and community-level data and potential plans to conduct work to address the issue. The Committee will also discuss the Predictability Roadmap as part of the Standards Subcommittee's project to identify possible approaches to improve the predictability and improvements in the adoption and processes related to updating standards and operating rules for electronic administrative transactions (*e.g.* claims, eligibility, electronic funds transfer); health terminology & vocabulary development, maintenance, and dissemination processes; and mapping out activities and timelines for the Committee's 2018 work.

The times and topics are subject to change. Please refer to the posted agenda for any updates.

Contact Person for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda and instructions to access the audio broadcast of the meetings will also be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Dated: November 27, 2017.

Laina Bush,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2017–25895 Filed 11–30–17; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations to the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) is seeking nominations of qualified individuals to be considered for appointment as members of the Presidential Advisory Council on HIV/AIDS (PACHA). The PACHA is a federal advisory committee within the Department of Health and Human Services (HHS). Management support for the activities of this Council is the responsibility of the Office of HIV/AIDS and Infectious Disease Policy in the OASH. The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration for appointment as members of the PACHA. Members of the Council, including the Chair, are appointed by the Secretary. Members are invited to serve on the Council for up to four-year terms. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention and care of HIV infection and AIDS. The functions of the Council are solely advisory in nature.

DATES: All nominations must be received no later than 5:00 p.m. (ET) on January 2, 2018 to the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Ms. B. Kaye Hayes, Executive Director, PACHA, Department of Health and Human Services, Office of HIV/AIDS and Infectious Disease Policy, 330 C Street SW., Room L100B, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, 330 C Street SW., Room L106B, Washington, DC 20024; (202) 795–7622 or Caroline.Talev@hhs.gov. More detailed information about PACHA can

be obtained by accessing the Council's page on the HIV.gov site at <https://www.hiv.gov/federal-response/pacha/about-pacha>.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996, and is currently operating under the authority given in Executive Order 13811, dated September 29, 2017. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention and care of HIV infection and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House. Pursuant to advance written agreement, Council members shall receive no stipend for the advisory service they render as members of PACHA. However, as authorized by law and in accordance with federal travel regulations, PACHA members may receive per diem and reimbursement for travel expenses incurred in relation to performing duties for the Council.

This announcement is to solicit nominations of qualified candidates to fill vacancies on the PACHA.

Nominations: In accordance with the PACHA charter, persons nominated for appointment as members of the PACHA should be among prominent community leaders and authorities with particular expertise in, of knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment:

- Name, return address, and daytime telephone number and affiliation(s) of the individual being nominated, the basis for the individual's nomination, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the Council;

- Name, return address, and daytime telephone number at which the nominator may be contacted. Nominations from organizations must identify a principal contact person; and
- A copy of a current resume or curriculum vitae for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Council. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department is legally required to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee. For the PACHA, it is important that the perspectives of people living with HIV, those from groups that are disproportionately affected by HIV infection and AIDS, health care providers, and organizations providing prevention, care and treatment services to these populations be included. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Council. Appointment to the Council shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as members of the Council.

Dated: November 22, 2017.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2017-25915 Filed 11-30-17; 8:45 am]

BILLING CODE 4150-43-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2017-1032]

Cooperative Research and Development Agreement: Cellular Phone Geolocation Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with TriaSys Technologies Corp, to investigate the potential operational use of cellular phone direction finding technology. The intent to enter in a potential CRADA with TriaSys Corp is based on market research and visits to vendors with advertised expertise in this unique application of technology in the maritime environment for Search and Rescue. While the Coast Guard is currently considering partnering with TriaSys Technologies Corp, the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via <http://www.regulations.gov> on or before January 2, 2018.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before January 2, 2018.

ADDRESSES: Submit comments online at <http://www.regulations.gov> in accordance with Web site instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact Donald Decker, Project Official, C4ISR Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860-271-2701, email Donald.d.decker@uscg.mil.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG-2017-1032 and

should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).¹ A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, human systems

¹ The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

integration and other data on cellular direction finding technologies. After an initial installation and familiarization period, the Coast Guard plans to evaluate a designated platform outfitted with the communications technology for a period of one week.

We anticipate the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Develop the Demonstration Pilot Assessment Plan to meet the objectives of the CRADA with a diverse set of real-life mission scenarios.

(2) Provide the pilot demonstration support in and around Charleston, SC.

(3) Coordinate Pilot demonstration from onboard a USCG cutter.

(4) Collaborate with non-Federal partners to prepare demonstration documentation including equipment assessments, final report(s), and briefings.

We anticipate that the non-Federal participant's contributions under the proposed CRADA will include the following:

(1) Assist the R&D Center in the development and drafting of all CRADA documents, including the pilot demonstration assessment plan, equipment assessments, final report(s), and briefings.

(2) Provide and maintain the direction finding equipment to ensure the system is usable.

(3) Secure, with R&D Center assistance, Special Temporary Authority (STA) to employ the equipment within the desired frequency bands.

(4) Provide technical support, training and maintenance throughout the period of performance to ensure maximum availability and utility of the networks.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF-12, etc.).

The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering TriaSys Technologies Corp for participation in this CRADA. This consideration is based on the fact that TriaSys Systems has demonstrated its technical ability as the developer, manufacturer, and integrator of cellular direction finding equipment. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

The USCG's intent to enter in a potential CRADA with TriaSys Corp is based on market research and visits to vendors with advertised expertise in this unique application of technology in the maritime environment for Search and Rescue. The research includes employment of their antennas, equipment and graphical user interface (GUI) to establish direction and geo-location of cellular phones in an open-ocean environment. Specifically, the equipment will provide both a Line of Bearing (LOB) and a Global Positioning System (GPS) location to a cellular phone in a search and rescue scenario. The equipment will be setup in locations with use in the open ocean environment. A Pilot Demonstration schedule has been proposed in which TriaSys Systems will provide their equipment. The Coast Guard Research and Development Center (R&D Center) will prepare a Pilot Demonstration Assessment Plan and TriaSys Systems will operate the equipment for exploratory development over a one week period to collect information on suitability, reliability, maintenance requirements, and ease of use.

This is a technology assessment effort. The goal for the Coast Guard of this CRADA is to better understand the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with cellular direction finding technologies. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This document is issued under the authority of 5 U.S.C. 552(a).

Dated: November 14, 2017.

Bert N. Macesker,

Executive Director, Acting Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2017-25926 Filed 11-30-17; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Intertek USA, Inc. (Baytown, TX), as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Intertek USA, Inc. (Baytown, TX), as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Baytown, TX), has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 30, 2016.

DATES: Intertek USA, Inc. (Baytown, TX) was approved, as a commercial laboratory as of August 30, 2016. The next triennial inspection date will be scheduled for August 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., 8500 West Bay Road MS #20A, Baytown, TX 77523 has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: November 21, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2017-25869 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation (Baton Rouge, LA), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation (Baton Rouge, LA), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Baton Rouge, LA), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of May 24, 2017.

DATES: Inspectorate America Corporation (Baton Rouge, LA) was approved as a commercial gauger as of May 24, 2017. The next triennial inspection date will be scheduled for May 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13,

that Inspectorate America Corporation, 11346 Pennywood Ave., Baton Rouge, LA 70809 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Maritime Measurement.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: November 21, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2017-25870 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. (Harvey, LA), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Harvey, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Harvey, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 14, 2017.

DATES: Intertek USA, Inc. (Harvey, LA) was accredited and approved, as a commercial gauger and laboratory as of June 14, 2017. The next triennial inspection date will be scheduled for June 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2604 Moss Lane, Harvey, LA 70058 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).

CBPL No.	ASTM	Title
27-02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: November 21, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2017-25871 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2017-0036; OMB No. 1660-0068]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Hotel and Motel Fire Safety Declaration Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning a list of hotels, motels, and similar places of public

accommodations meeting minimum fire-safety requirements. The information collected is voluntary; if approved for listing, the lodging establishment may be used by Federal employees on government related travel and for Federal agency conferences. As the list is open to use by the public, non-government travelers may use the list to identify lodging meeting minimum life-safety criteria from fire.

DATES: Comments must be submitted on or before January 30, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA-2017-0036. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Teresa Kaas, Fire Program Specialist, FEMA/U.S. Fire Administration, 301-447-1263 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at email address: FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: Public Law 101-391 requires FEMA to establish and maintain a list of hotels, motels, and similar places of public accommodation meeting minimum requirements for protection of life from fire; the list is known as the National Master List (NML). This law resulted from a series of deadly fires in hotels

and motels, occurring in the late 70's and 80's, with high loss of life. The legislative intent of this public law is to provide all travelers the assurance of fire-safety in accommodations identified on the National Master List. Public Law 101-391 further stipulates that Federal employees on official travel stay in properties approved by the authority having jurisdiction (AHJ) and listed on the current NML. For statutory reference see Title 15 U.S.C. 2224-26.

Collection of Information

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660-0068.

FEMA Form: FEMA Form 516-0-1, Federal Hotel and Motel Fire Safety Declaration Form.

Abstract: FEMA Form 516-0-1 collects basic information on life-safety systems related directly to fire-safety in hotels, motels, and similar places of accommodations applying for inclusion on the National Master List in compliance with the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101-391). Information is published in the National Master List and is publicly available.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Estimated Number of Respondents: 1,330.

Estimated Number of Responses: 1,897.

Estimated Total Annual Burden Hours: 523 hours.

Estimated Total Annual Respondent Cost: \$22,116.82.

Estimated Respondents' Operation and Maintenance Costs: \$0.

Estimated Respondents' Capital and Start-Up Costs: \$0.

Estimated Total Annual Cost to the Federal Government: \$67,971.47.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper

performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 27, 2017.

Tammi Hines,

*Acting Records Management Program Chief,
Mission Support, Federal Emergency
Management Agency, Department of
Homeland Security.*

[FR Doc. 2017-25934 Filed 11-30-17; 8:45 am]

BILLING CODE 9110-4512-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2017-0035]

Notice of Utilization of Streamlined Procedures for Environmental Assessments Associated With Hurricanes Harvey, Irma, Maria, and Nate

AGENCY: Federal Emergency Management Agency; Department of Homeland Security.

ACTION: Notice.

SUMMARY: As a result of recent unprecedented hurricanes, disasters have been declared for areas affected by Hurricanes Harvey, Irma, Maria, and Nate. Due to the catastrophic damages caused by these hurricanes, FEMA must have a more efficient and streamlined procedure for achieving compliance under the National Environmental Policy Act (NEPA) during multiple, simultaneous, recovery missions for the provision of disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, including Individual Assistance, Public Assistance, and Hazard Mitigation Assistance. After assessing the scale of current recovery operations, and identifying the critical need for timely rebuilding of the affected communities, FEMA, in consultation with the Department of Homeland Security, determined that exigent circumstances

exist. As a result of these exigent circumstances, FEMA may utilize the streamlined procedures outlined in this notice for those activities that require an Environmental Assessment.

ADDRESSES: For access to the docket to read background documents, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for the docket ID. Documents may also be inspected at FEMA, Office of Chief Counsel, Room 8NE, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Zeringue, Katherine.zeringue@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: As a result of unprecedented damages from 2017 Hurricane Season, federal disasters were declared for multiple areas affected by Hurricanes Harvey, Irma, Maria and Nate. Due to the catastrophic damages caused by these hurricanes, it is critical that FEMA create a more efficient and streamlined procedure for NEPA compliance for multiple, simultaneous, recovery missions and the provision of disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 4121 *et seq.*, including Individual Assistance, Public Assistance, and Hazard Mitigation Assistance. After assessing the scale of the recovery operations, and the need for the timely rebuilding of all of the affected communities, FEMA, in consultation with the Department of Homeland Security (DHS), determined that exigent circumstances exist. As a result of these exigent circumstances, FEMA may utilize streamlined procedures for those activities that require an Environmental Assessment (EA) under NEPA. The streamlined NEPA procedures may include any or all of the following:

(1) The public involvement process for EAs associated with Hurricanes Harvey, Irma, Maria, and Nate may be condensed to more efficiently complete NEPA review [DHS Instruction Manual 023-01-001-01, Rev 1 Section V.C (7)]. Public review and comment periods may vary depending upon the urgency of the action. FEMA may provide for a 3-day comment period for the following actions:

- Group Housing Sites
- Interim and/or temporary facilities for:
 - Hospitals and health care facilities;
 - schools and day care centers;
 - utilities and wastewater treatment plants;
 - police and fire stations;
 - government and court facilities;
 - detention centers and jailhouses;

- transportation facilities.

FEMA may provide for a 14-day comment period for all other actions associated with Hurricanes Harvey, Irma, Maria and Nate. Public comments to the EAs can be submitted via phone or email. Specific contact information will be provided in each individual EA.

(2) FEMA may favor electronic media rather than other forms of media for notifications to the public because traditional media may no longer be available to affected communities, take longer to prepare, or add additional cost. Electronic notifications may reach a broader audience, since affected communities may be displaced or away from their traditional access points for local information (such as the U.S. Postal Service or local libraries that may be affected by the disaster). FEMA will continue use of the Unified Federal Review for notification to Other Federal Agencies that may have an interest in a relevant project.

(3) Unless other action alternatives are readily available, FEMA may focus EA level analysis and documentation on the "No Action" and "Proposed Action" alternatives (40 CFR 1508.9, Sec. 102; 42 U.S.C. 4332). FEMA's action is often to approve or deny requests for federal disaster assistance, from affected communities. This means that FEMA's "Proposal" or proposed action occurs when FEMA is considering a grant application or application for assistance.

(4) FEMA may discuss resource areas in detail only if it determines that there is a potential impact to the resources, rather than following the procedure outlined in FEMA Instruction 108-1 Section 3.4(C)(4) that requires FEMA to address in detail the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), Executive Order 11988, Executive Order 11990, and Executive Order 12898 in its EAs regardless of the potential for impact to these resources. These streamlined procedures will supersede the requirement in FEMA's Instruction and allow FEMA to identify, and eliminate from detailed study, the issues that are not significant (40 CFR 1501.7).

The above changes, along with other internal efficiencies that FEMA may employ to comply with NEPA, such as document templates and analysis and reference tools, will allow FEMA to balance concise environmental reviews with open communication and the opportunity for meaningful public input in the decision making process. It also allows the public the opportunity to participate in FEMA's NEPA process and receive timely assistance and grants. FEMA acknowledges that the

2017 Atlantic Hurricane Season is still underway, and it may be necessary to re-issue this notification in the future.

The changes FEMA may employ for the recovery efforts for Hurricanes Harvey, Irma, Maria and Nate do not affect the requirements of any other environmental or historic preservation laws, regulations, or executive orders. This notice addresses FEMA's requirements under DHS Instruction Manual 023-01-001-01 Rev 1 Sections V. C (7) and VII M (1-3) and provides the public with sufficient notice of FEMA's intent to expedite federal assistance by reducing typical, but not required, public input timeframes. The Streamlined Procedures for Environmental Assessments under NEPA is available for reviewing at www.regulations.gov under FEMA-2017-0035. FEMA and DHS will post this notice and will provide any updates to the public on its Web sites at: <https://www.fema.gov/fema-national-environmental-policy-act-streamlined-procedures> and <https://www.dhs.gov/national-environmental-policy-act>.

Authority: The authority for the streamlined procedures for Environmental Assessments under the NEPA is derived from DHS Instruction Manual 023-01-001-01 Rev 1 Section V. C (7).

Dated: November 22, 2017.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017-25933 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-46-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2017-0059]

Statewide Communication Interoperability Plan Template and Progress Report

AGENCY: National Protection and Programs Directorate (NPPD), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; revised collection, 1670-0017.

SUMMARY: The DHS NPPD Office of Cybersecurity and Communications (CS&C) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until January 30, 2018.

This process is conducted in accordance with 5 CFR part 1320.

ADDRESSES: You may submit comments, identified by docket number DHS-2017-0059, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Please follow the instructions for submitting comments.
- **Email:** SCIP@hq.dhs.gov. Please include docket number DHS-2017-0059 in the subject line of the message.
- **Mail:** Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/OEC, ATTN: 1670-0017, 245 Murray Lane SW., Arlington, VA 20598-0640.

Instructions: All submissions received must include the words "Department of Homeland Security" and docket number DHS-2017-0059. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Richard Tenney at 703-705-6281 or at SCIP@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: The DHS NPPD CS&C Office of Emergency Communications (OEC), formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 571 *et seq.*, is required, pursuant to 6 U.S.C. 572, to develop the National Emergency Communications Plan (NECP), which includes identification of goals, timeframes, and appropriate measures to achieve interoperable communications capabilities. The Statewide Communication Interoperability Plan (SCIP) Template and Annual SCIP Snapshot Report are designed to meet and support these statutory requirements.

OEC will use the information from the SCIP Template and Annual SCIP Snapshot to track the progress States are making in implementing milestones and demonstrating goals of the NECP, as required through the Homeland Security Act of 2002, 6 U.S.C. 572. The SCIP Template and Annual SCIP Snapshot will provide OEC with broader capability data across the lanes of the Interoperability Continuum, which are key indicators of consistent success in response-level communications.

In addition, the SCIP Template and the SCIP Snapshot will assist States in their strategic planning for interoperable and emergency communications while demonstrating each State's achievements and challenges in accomplishing optimal interoperability for emergency responders. Moreover, certain government grants may require States to update their SCIP Templates and SCIP Snapshot to include broadband efforts in order to receive funding for interoperable and emergency communications.

Statewide Interoperability Coordinators (SWICs) will be responsible for collecting this information from their respective stakeholders and governance bodies, and will complete and submit the SCIP Snapshots directly to OEC through unclassified electronic submission.

The SCIP Template and Annual SCIP Snapshot may be submitted through unclassified electronic submission to OEC by each State's SWIC in addition to being able to submit their respective SCIP Template and Annual SCIP Snapshot via email to SCIP@hq.dhs.gov.

OEC streamlined its annual SCIP reporting process to obtain standard data to understand progress and challenges in emergency communications planning. OEC replaced the lengthier Annual Progress Report with the SCIP Snapshot as a reporting mechanism for States and territories for submitting SCIP progress, achievements and challenges. The data collected is based on calendar year reporting. The SCIP Snapshot also includes sections for States and territories to report on the status of governance structures, progress towards SCIP goals and initiatives, and overall successes and challenges in advancing interoperable emergency communications.

This is a revised information collection. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title: Agency Information Collection Activities: Statewide Communication Interoperability Plan (SCIP) Template and Progress Report.

OMB Number: 1670-0017.

Frequency: Annually.

Affected Public: Private and Public Sector.

Number of Respondents: 56.

Estimated Time per Respondent: 6 hours.

Total Burden Hours: 336 hours.

David Epperson,

Chief Information Officer.

[FR Doc. 2017-25846 Filed 11-30-17; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0078]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application To File Declaration of Intention

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged

and will be accepted until January 2, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0078 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 15, 2017, at 82 FR 43395, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2008-0007 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-300; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. The Form N-300 is used by lawful permanent residents to file a Declaration of Intention to become a United States citizen ("Declaration of Intention"). Although the Declaration of Intention is not required for naturalization, some lawful permanent residents find it necessary to file Form N-300 to fulfill requirements of states that mandate specific documentation from resident aliens seeking to work in certain occupations or professions, or to obtain various licenses. The Form N-300 facilitates this process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N-300 is 18 and the estimated hour burden per response is .75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 13.5 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$508.50.

Dated: November 24, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2017-25890 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0131]

Agency Information Collection Activities; Revision of a Currently Approved Collection: USCIS Electronic Payment Processing

AGENCY: U.S. Citizenship and
Immigration Services, Department of
Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 2, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0131 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377

(This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 14, 2017 at 82 FR 43248, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2014-0005 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Electronic Payment Processing.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form G-1450; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants (see INA section 286(m), 8 U.S.C. 1356(m)) and USCIS will accept certain fee payments electronically.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 3,288,753 and the estimated hour burden per response is .12 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 394,652 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no cost associated with this collection of information. Any cost burden associated with this collection of information is captured as a part of the form which requires a payment to be processed.

Dated: November 24, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2017-25887 Filed 11-30-17; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2017-N123;
FXES11140100000-178-FF01E00000]

Notice of Availability of a Draft Habitat Conservation Plan and Draft Environmental Assessment for the Lalamilo Wind Farm Repowering Project, Island of Hawaii, Hawaii

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Lalamilo Wind Company, LLC (applicant), for an incidental take permit (ITP) under the

Endangered Species Act of 1973, as amended (ESA). The applicant is requesting an ITP to authorize take of the endangered Hawaiian hoary bat and the endangered Hawaiian petrel. If issued, the ITP would authorize incidental take of these two species that may occur as a result of the operation of the Lalamilo Wind Farm Repowering Project (project). The ITP application includes a draft habitat conservation plan (HCP) describing the actions and the measures the applicant will implement to avoid, minimize, mitigate, and monitor incidental take of the two species. The Service also announces the availability of a draft environmental assessment (EA) that has been prepared in response to the ITP application in accordance with the requirements of the National Environmental Policy Act (NEPA). We are making the ITP application, including the draft HCP and the draft EA, available for public review and comment.

DATES: To ensure consideration, please send your written comments by January 16, 2018.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Lalamilo Wind Farm HCP, draft EA, and the proposed issuance of the ITP:

- **Internet:** Documents may be viewed on the internet at <http://www.fws.gov/pacificislands/>.

- **Email:** lalamilohcp_ea@fws.gov. Include "Draft Lalamilo HCP and EA" in the subject line of the message.

- **U.S. Mail:** Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850.

- **Fax:** 808-792-9581, Attn: Field Supervisor. Include "Draft Lalamilo HCP and EA" in the subject line of the message.

- **In-Person Drop-off, Viewing, or Pickup:** Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office (address above). Written comments can be dropped off during regular business hours on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Michelle Bogardus (Maui Nui and Hawaii Geographic Team Manager), U.S. Fish and Wildlife Service by mail at the address in **ADDRESSES**; by telephone at 808-792-9400; or by email at lalamilohcp_ea@fws.gov. If you use a

telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Service has received an ITP application from the Lalamilo Wind Company, LLC in accordance with the requirements of the ESA (16 U.S.C. 1531 *et seq.*). The applicant is requesting an ITP to authorize take of the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) and the endangered Hawaiian Petrel (*Pterodroma sandwichensis*). Collectively, these two species are hereafter referred to as the covered species. If issued, the ITP would authorize incidental take of the covered species that may occur as a result of the operation of the project. The ITP application includes a draft HCP describing the actions and the measures the applicant will implement to avoid, minimize, mitigate, and monitor incidental take of the covered species. The Service also announces the availability of a draft EA that has been prepared in response to the ITP application in accordance with requirements of NEPA. We are making the ITP application, including the draft HCP and the draft EA, available for public review and comment.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm," as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps

the applicant will take to minimize and mitigate the impact of such taking;

- (3) The applicant will ensure that adequate funding for the plan will be provided;

- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

- (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

Proposed Action

The applicant proposes to operate the project to provide electricity to eight existing water wells in the Lalamilo-Parker well system, which is located near the town of Kamuela, South Kohala District, Island of Hawaii, Hawaii. The Lalamilo Wind Farm was originally constructed in the mid-1980s with 120 wind turbines, with an installed generating capacity of 2.7 megawatts (MW). It was decommissioned in 2010 in anticipation of repowering the site. In 2013, the County of Hawaii Department of Water Supply (DWS) awarded the applicant a contract to design, build, and operate the wind farm and associated facilities for the project. Construction was completed in 2016, and the applicant is currently curtailing the wind turbine generators so that only two turbines are operational at a time. The wind farm is located on approximately 126 acres of State-owned land leased by the DWS from the State of Hawaii's Department of Land and Natural Resources (DLNR) in South Kohala. The project area is zoned "agriculture" and is surrounded on all sides by agricultural pastoral lands principally used for cattle (*Bos taurus*) grazing. The topography of the project area consists of a relatively flat plateau falling off to the west and north. Elevations range from 1,401 feet to 1,145 feet above mean sea level, with an average slope of 5 percent. Several small, dry gulches occur around the west and north portions of the project site.

The project consists of five Vestas 660-kilowatt V47 wind turbines with a combined generating capacity of up to approximately 3.3 MW and an updated monitoring and control system to optimize the operations of the water well pumping system. Power is provided to Parker Wells 1 through 4 and Lalamilo Wells A through D. The maximum blade tip height of the five turbines is 198.5 feet above ground level. Associated infrastructure includes a 197-foot-tall meteorological guyed tower, two 88-foot-tall free-standing lattice radio towers, 1.3 miles of roads

to access the turbines, an electrical collection system, an operations and maintenance building, a new 1.3-mile-long, 13-kilovolt overhead electrical transmission line adjacent to the existing road, and updated switchgear and electrical interconnection equipment.

The project is located on the island of Hawaii, where Hawaiian hoary bats are known to collide with wind turbine structures at the existing Pakini Nui 21-MW wind energy facility. The Hawaiian petrel and the Hawaiian hoary bat are also known to collide with wind turbine structures at the existing 30-MW Kaheawa Wind Power, the 21-MW Kaheawa Wind Power II, and the 21-MW Auwahi wind energy facilities on Maui. Acoustic monitoring indicates that the Hawaii hoary bat flies in the area occupied by the project's wind turbines. Hawaiian petrels may transgress over the project and may be affected by the applicant's activities associated with operation and maintenance of the project.

The applicant has developed a draft HCP that addresses the incidental take of the two covered species that may occur as a result of the operation of the project over a period of 20 years. The draft HCP includes proposed measures the applicant will implement to avoid, minimize, mitigate, and monitor incidental take of the covered species. It is expected that only up to three of the five turbines will be in operation at any one time. All turbine blades will be curtailed (not rotating or rotating extremely slowly) from sunset to dusk, until wind speeds of 5.5 meters per second (m/s) are sustained for 10 minutes, at which time the blades would be pitched into the wind and begin rotating to generate power when needed for the water pumps. The applicant has also applied for a State of Hawaii incidental take license under Hawaii State law.

To offset anticipated take impacts, the applicant is proposing mitigation measures on the island of Hawaii that include: (1) A combination of native forest restoration and management in the Kahuku section of Hawaii Volcanoes National Park to increase and improve Hawaiian hoary bat habitat; (2) acoustic surveys to document the occupancy of the Hawaiian hoary bat; and (3) funding of fence maintenance and predator control to protect the Hawaiian petrel in a vulnerable area of Hawaii Volcanoes National Park. The HCP incorporates adaptive management provisions to allow for modifications to the mitigation and monitoring measures as knowledge is gained during implementation of the HCP.

The Service proposes to approve the HCP and to issue an ITP with a term of 20 years to the applicant for incidental take of the covered species caused by activities associated with the operation of the project, if permit issuance criteria are met.

National Environmental Policy Act Compliance

The development of the draft HCP and the proposed issuance of an ITP under this plan is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We have prepared a draft EA to analyze the environmental impacts of four alternatives related to the issuance of the ITP and implementation of the conservation program under the proposed HCP. The four alternatives include a no-action alternative, the proposed action, a no curtailment alternative, and an increased cut-in speed alternative.

Under the no-action alternative, the Service would not authorize incidental take of the covered species. All facility turbines would be non-operational from sunset to sunrise—*i.e.*, completely curtailed at night. This alternative would result in complete loss of renewable electricity production from approximately one hour before dusk to one hour after dawn. This alternative would reduce the risk of take of the two covered species. Incidental take of the covered species could occur during daytime operations, though the risk is negligible. Under this alternative the applicant would not have the regulatory assurance to avoid a potential violation of the ESA.

The proposed action alternative is operation of the project, implementation of the HCP, and issuance of the ITP, as proposed. Under this alternative, all facility turbines would be non-operational (curtailed) from sunset to sunrise until winds of 5.5 m/s were sustained for 10 minutes, at which time the turbine blades would be pitched into the wind and begin rotating to generate power. It is expected that no more than three turbines would be operating simultaneously. The applicant would provide compensatory mitigation to offset the impacts of the taking on the covered species.

Under the no curtailment alternative, the applicant would not implement curtailment from sunset to sunrise. This alternative would produce the most renewable energy. This alternative would result in an increase in the time during which the turbine blades would be rotational, particularly at lower wind speeds, and would present a greater risk of collision-related mortality to the

covered species. The applicant would provide compensatory mitigation to offset the higher take of the covered species.

Under the increased cut-in speed alternative, all facility turbines would be non-operational from sunset to sunrise until winds of 6.5 m/s were sustained for 10 minutes, at which time the turbine blades would be pitched into the wind and begin rotating to generate power. This alternative would produce less renewable energy than the proposed alternative. There is no certainty that incidental take of covered species would be reduced with the higher cut-in speed. The applicant would provide compensatory mitigation to offset the impacts of the taking on the covered species.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from the public on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the draft EA pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the HCP for the project pursuant to the requirements for ITPs at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Field Office (see **ADDRESSES**).

Next Steps

We will evaluate the ITP application, associated documents, and public comments in reaching a final decision on whether the application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). The HCP and EA may change in response to public comments. After completion of the EA, we will determine whether the proposed action warrants a finding of no significant impact or whether an environmental impact statement should be prepared. We will also evaluate whether the proposed ITP action would comply with the requirements of section 7 of the ESA by conducting a formal consultation on the proposed ITP action. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an ITP. If the requirements are met, we will issue the ITP to the applicant. We will not make our final decision until after the end of the 45-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Dated: September 14, 2017.

Theresa E. Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2017-25875 Filed 11-30-17; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2017-N107;
FXES11140800000-178-FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan for the Coastal California Gnatcatcher and Associated Documents; Brea, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Orange County Waste & Recycling for a 5-year incidental take

permit for the threatened coastal California gnatcatcher pursuant to the Endangered Species Act. We are requesting comments on the permit application and on our preliminary determination that the applicant's accompanying proposed habitat conservation plan qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before January 2, 2018.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.
- *Email:* fw8cfwocomments@fws.gov; please include "Olinda Alpha Landfill HCP" in the subject line.

Obtaining Documents: You may obtain copies of the proposed HCP and EAS on the Carlsbad Fish and Wildlife's HCP Web site at https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html. To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760-431-9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760-431-9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Orange County Waste & Recycling (applicant) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA). The application addresses the potential "take" of the threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) in the course of activities associated with the construction, operation, and

maintenance of the Olinda Alpha Landfill projects, in the City of Brea, Orange County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant's proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA). The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. "Take" is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. "Incidental taking" is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 5-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent impacts to 5.78 acres (ac) of coastal sage scrub habitat that the species uses for breeding, feeding, and sheltering, as well as 2.85 ac of nonnative grassland habitat that may support gnatcatcher foraging and/or dispersal. The take would be incidental to the applicant's activities associated with the construction of the Olinda Alpha Landfill projects in the City of Brea, California, and includes restoration and in-perpetuity

preservation and management of 11.56 ac of gnatcatcher habitat.

The Olinda Alpha Landfill projects propose to construct a desilting basin, perform a partial cap closure, install screening trees for the Brea Power Plant, and construct a winch concrete pad on 12.56 ac located on the 565-ac Olinda Alpha Landfill property in the City of Brea. The project will permanently impact 5.78 ac of coastal California gnatcatcher-occupied coastal sage scrub habitat as a result of clearing and grading activities.

To minimize take of coastal California gnatcatcher by the Olinda Alpha Landfill projects and to offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 5.78 ac of occupied gnatcatcher coastal sage scrub habitat through the restoration, conservation, and in-perpetuity management of 11.56 ac of coastal sage scrub suitable for the gnatcatcher by a Service-approved restoration contractor and the Puente Hills Habitat Preservation Authority. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the gnatcatcher:

- Prior to the initiation of work activities on the project sites, grading limits will be clearly delineated with flagging and/or temporary fencing and silt fencing, as necessary, to help guide work activities and avoid impacts to areas beyond the project boundaries.
- Prior to the initiation of work activities on the project sites, a Service-approved biologist will conduct a brief training session for all project personnel regarding the conservation measures and regulations described herein, as well as general information and methods that will help avoid and minimize disturbance to the gnatcatcher in the vicinity of project activities.
- A Service-approved biologist will monitor grading of the site daily (or as determined necessary by the monitoring biologist) and provide a letter summarizing compliance with this HCP and the construction limits of the proposed projects to the Service within 1 month of completion of grading.
- Vegetation clearing will take place outside of the bird nesting season (February 15 through August 31) to the fullest extent practicable. Clearing may only occur during this period once a Service-approved biologist has conducted at least three surveys of the impact areas for nesting birds, with each survey taking place 1 week apart, and the last survey conducted within 24 hours prior to clearing. The qualified biologist will document compliance with the Migratory Bird Treaty Act and

other applicable regulations that protect nesting birds. If an active bird nest is observed, a 300-foot buffer must be established, within which no project activities will occur until the nest is no longer active. A reduced buffer may be established by the monitoring biologist if it is deemed appropriate and will not result in the alteration of nesting behaviors. To fulfill this measure, all project activities that are deemed necessary to occur during the bird nesting season will be monitored by the qualified biologist, as well as any active nest detected in the vicinity of project activities.

- Project sites will be kept as clean as possible to avoid attracting predators. All food-related trash will be placed in sealed bins or removed from the site regularly.
- Staging areas for each project will be limited to developed or previously disturbed areas.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the construction of the Olinda Alpha Landfill projects. In the proposed HCP, the applicant considers alternatives to the taking of gnatcatcher under the proposed action. Alternative development configurations for each project component were considered; however, because of site-specific regulatory requirements and the topography of the site, further avoidance of impacts to coastal California gnatcatcher habitat could not be achieved. The applicant also considered the No Action Alternative. Under the No Action Alternative, no incidental take of coastal California gnatcatcher resulting from habitat modification would occur, and no long-term protection and management would be afforded to the species.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of gnatcatcher.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the ADDRESSES section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott A. Sobiech,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2017-25889 Filed 11-30-17; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Kofi E. Shaw-Taylor, M.D. Decision and Order**

On June 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Kofi E. Shaw-Taylor, M.D. (hereinafter, Respondent) of Baltimore, Maryland. GX 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that Respondent does "not have authority to handle controlled substances in the State of Maryland," the State in which he is registered. GX 1, at 1 (citing 21 U.S.C. 823(f) and § 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. AS2145476 which authorizes him to dispense controlled substances in schedules II through V as a practitioner at the registered address of 4419 Falls Road, Suite C, Baltimore, Maryland 21211. GX 1, at 1. *See also* GX 2 (Controlled Substance Registration Certificate) (including "Westside Medical Group"). The Show Cause Order alleged that this registration expires on February 29, 2020. GX 1, at 1. *See also* GX 2.

As the substantive ground for the proceeding, the Show Cause Order alleged that Respondent is "without authority to handle controlled substances in Maryland, the state in which . . . [he is] registered with the DEA." GX 1, at 1. It further alleged that, on May 9, 2017, Respondent's "authority to prescribe and administer controlled substances in the State of Maryland was suspended." GX 1, at 1. *See also* GX 3 (Maryland State Board of Physicians Order of Summary Suspension of License to Practice Medicine, hereinafter Order of Summary Suspension). The Show Cause Order alleged that "DEA must revoke . . . [his] DEA . . . [registration] based upon . . . [his] lack of authority to

handle controlled substances in the State of Maryland." GX 1, at 1 (citing 21 U.S.C. 802(21), 823(f)(1), and 824(a)(3)).

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. GX 1, at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of the opportunity to submit a corrective action plan. GX 1, at 2 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated July 17, 2017 addressed to the Office of the [DEA] Administrative Law Judges, Respondent, by his counsel, requested a hearing. GX 5, at 1. The letter admitted that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's license to practice medicine on May 9, 2017. *Id.* According to the letter, Respondent was challenging that Order "on grounds of abuse of and lack of due process." *Id.*

On July 24, 2017, the Chief Administrative Law Judge, John J. Mulrooney, II, ordered the Government to file proof of service and evidence in support of its allegation that Respondent lacked State authority to practice medicine. GX 6, at 1 (Order Directing the Filing of Proof of Service and Government Evidence of Lack of State Authority Allegation and Briefing Schedule). The Order also established a briefing schedule "if the Government files a motion based on timeliness of the hearing request and/or a motion for summary disposition based on its allegation that the Respondent lacks state authority to handle controlled substances." *Id.* at 1-2.

By submission dated July 28, 2017, Respondent, by his counsel, submitted an "Order to Show Cause Waiver of Hearing and Statement on the Matter." GX 7. According to that submission, Respondent's counsel stated that Respondent was served with the Show Cause Order on June 20, 2017. GX 7, at 1. He also stated that Respondent was waiving a hearing on the Show Cause Order. *Id.* Further, the submission admitted that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's license to practice medicine, characterizing the Order as being "based on alleged but unproven charges." *Id.* It expressed "our fervent belief that the Respondent shall prevail in this matter and his Medical license reinstated." *Id.* It asked that "the DEA suspend the revocation" of Respondent's registration "pending the restoration of the Medical license to save the Respondent the

inconvenience, trauma and the lengthy process of reapplication of this same license." *Id.*

By Order dated August 2, 2017, the Chief Administrative Law Judge terminated the proceedings based on Respondent's "Order to Show Cause Waiver of Hearing and Statement on the Matter." GX 8, at 1 (Order Terminating Proceedings).

On August 2, 2017, the Government submitted a Request for Final Agency Action and an evidentiary record to support the Show Cause Order's allegation.

I find that the Government's service of the Show Cause Order on Respondent was legally sufficient. I find that, by letter from his counsel dated July 17, 2017, Respondent requested a hearing. I find that, by submission of his counsel dated July 28, 2017, Respondent sought to file an "Order to Show Cause Waiver of Hearing and Statement on the Matter." Respondent was entitled to waive his right to a hearing and to fail to follow up on his request for a hearing. *See* 21 CFR 1301.43(d). DEA regulations, however, limit the time for Respondent to exercise his right to submit a written statement of position to "the period permitted for filing a request for a hearing or a notice of appearance," absent a showing of good cause. 21 CFR 1301.43(c). Respondent's "Statement on the Matter" was not filed within the period specified in the regulation, and Respondent did not make a showing of good cause to excuse the untimeliness. I decline, therefore, to consider any factual assertions or arguments that Respondent raised in the "Statement on the Matter."¹ I issue this Decision and Order based on the record submitted by the Government and on Respondent's request for a hearing. 21 CFR 1301.43(e).

Findings of Fact*Respondent's DEA Registration*

Respondent currently holds DEA practitioner registration AS2145476 authorizing him to dispense controlled substances in schedules II through V at the address of Westside Medical Group, 4419 Falls Road, Suite C, Baltimore, Maryland 21211. GX 1, at 1; GX 2. This registration expires on February 29, 2020. *Id.*

¹ Respondent's "Statement on the Matter" did not claim that Respondent's medical license had been reinstated. To the contrary, it reiterated Respondent's admission that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's medical license.

The Status of Respondent's State License

On May 9, 2017, the Executive Director of the Maryland State Board of Physicians signed a 34-page Order summarily suspending Respondent's license to practice medicine. GX 3. The Order of Summary Suspension discussed numerous complaints against Respondent, including complaints about Respondent's controlled substance prescribing practices, the conclusions of an independent peer review agency that Respondent did not meet quality standards for pain medicine, and allegations concerning Respondent's unprofessional conduct. *Id.* The Order of Summary Suspension concluded that Respondent acted unprofessionally in his pain medicine practice, among other areas, and determined that the public health, safety, or welfare imperatively required the emergency action of the suspension of Respondent's medical license. *Id.* at 31–32. The terms of the Order of Summary Suspension included the requirement that Respondent surrender his original Maryland license D26832 and his current license renewal certificate. *Id.* at 33.

On July 11, 2017, the DEA Diversion Investigator assigned to the investigation of Respondent (hereinafter, DI) signed a Declaration. GX 4. In that Declaration, the DI stated that Respondent's license to practice medicine in Maryland was suspended effective May 9, 2017 and that Respondent “currently has no authority to practice medicine in Maryland.” *Id.* at 1.

Respondent's hearing request admitted that the Maryland State Board of Physicians summarily suspended Respondent's Maryland medical license. GX 5, at 1. Respondent did not submit any evidence that his Maryland medical license was reinstated. Respondent, thus, admitted that he currently is not authorized to practice medicine in Maryland.

Accordingly, I find that Respondent currently is without authority to engage in the practice of medicine in Maryland, the State in which he is registered.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant . . . has had his State License or registration suspended [or] revoked by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled

substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “‘practitioner’ [to] mean[] a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts*, 53 FR 11,919, 11,920 (1988); *Blanton, supra*, 43 FR at 27,617.

According to Maryland Department of Health regulations, a “prescription for a controlled dangerous substance may be issued only by an individual practitioner who is . . . [a]uthorized to prescribe controlled dangerous substances in the State of Maryland, in which the practitioner is licensed to practice the practitioner's profession.” MD Code Regs. 10.19.03.07B(1)(a) (2017). The Maryland Department of Health regulations define an “individual practitioner” to be a “physician . . . or other individual licensed, registered, or otherwise permitted by . . . the jurisdiction in which the individual practitioner practices, to dispense a controlled dangerous substance in the course of professional practice.” MD Code Regs. 10.19.03.02C(7)(a) (2017). Under Maryland law, a “physician” is

“an individual who practices medicine,” and a “licensed physician” is a physician “who is licensed by the Board [of Physicians] to practice medicine.” West's MD Code Ann., Health Occupations, § 14–101(m) and (i) (2017). Further, in Maryland, to “practice medicine” means “to engage . . . in medical (i) Diagnosis; (ii) Healing; (iii) Treatment; or (iv) Surgery.” *Id.* at § 14–101(o)(1)(i–iv). Thus, in Maryland, a physician may be authorized to dispense controlled substances only if he is licensed to practice medicine.

In this case, the Maryland State Board of Physicians suspended Respondent's license to practice medicine. Consequently, Respondent is not currently eligible to handle controlled substances in the State of Maryland, the State in which he is registered with the Agency and, therefore, he is not entitled to maintain his DEA registration. *Hooper, supra; Blanton, supra*. Accordingly, I will order that Respondent's registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AS2145476 issued to Kofi E. Shaw-Taylor, M.D., be, and it hereby is, revoked. I further order that any pending application of Kofi E. Shaw-Taylor, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of Maryland, be, and it hereby is, denied. This order is effective immediately.²

Dated: November 20, 2017.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2017–25922 Filed 11–30–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Nanosyn, Inc.

AGENCY: Drug Enforcement Administration, Department of Justice.

² For the same reasons the Maryland State Board of Physicians of the Maryland Department of Health and Mental Hygiene suspended Respondent's Maryland Medical License summarily, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 30, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on August 11, 2017, Nanosyn, Inc., Nanoscale Combinatorial Synthesis, 3331-B Industrial Drive, Santa Rosa, California 95403 applied to be registered as a bulk manufacturer for the basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Fentanyl	9801	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form.

Dated: November 24, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017-25916 Filed 11-30-17; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: ABBVIE LTD

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 2, 2018. Such persons may also file a written request for a hearing on the application on or before January 2, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 27, 2016, ABBVIE, LTD, Carr. #2, KM 58.0 Cruce Davila, C/O PO Box 278, Barceloneta, Puerto Rico 00617 applied to be registered as an importer of tapentadol (9780), a basic class of controlled substance in schedule II.

The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol (9780)

for distribution to its customers. Placement of this drug code onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: November 24, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017-25921 Filed 11-30-17; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[OMB Number 1110-XXXX]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection

AGENCY: Laboratory Division Federal Bureau of Investigation Laboratory Division Survey of Forensic Science Services, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Laboratory Division (LD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until January 30, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cary Oien, United States Department of Justice, Federal Bureau of Investigation, Laboratory Division, 2501 Investigation Parkway, Quantico, VA 22135

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Federal Bureau of Investigation Laboratory Division Survey of Forensic Science Services.

(3) *Agency form number:* The form is unnumbered.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* This form will be utilized by the FBI Laboratory Division to collect feedback from state and local law enforcement agencies that have used the FBI Laboratory Division for forensic science examinations. The results of this survey will inform a five year forensic discipline portfolio projection for the Laboratory Division. The Laboratory Division is using this survey as a tool to answer questions about what their specific forensic science priorities are and how they value each forensic discipline; whether the Laboratory Division is servicing these specific needs; what they perceive as strengths and weaknesses of the FBI LD, and if they've identified trends in criminal investigations that a laboratory should be addressing.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1000 respondents will respond. We estimate the form will be completed within approximately 30 minutes.

(5) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500

total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: November 28, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017-25893 Filed 11-30-17; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number 1105-XXXX]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection; Comments Requested: Form USM-234, District/Aviation Security Officers (DSO/ASO) Personal Qualifications Statement

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 30, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG-3, 10th Floor, Washington, DC 20530-0001, by email at Nicole.Timmons@usdoj.gov, or by telephone at 202-236-2646.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New collection.

2. *The Title of the Form/Collection:* Form USM-234, District/Aviation Security Officers (DSO/ASO) Personal Qualifications Statement

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

- *Form number (if applicable):* USM-234
- *Component:* U.S. Marshals Service, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: District/Aviation Security Officers Job Applicants

Abstract: This form will primarily be used to collect applicant reference information. Reference checking is an objective evaluation of an applicant's past job performance based on information collected from key individuals (*e.g.*, supervisors, peers, subordinates) who have known and worked with the applicant. Reference checking is a necessary supplement to the evaluation of resumes and other descriptions of training and experience, and allows the selecting official to hire applicants with a strong history of performance. The questions on this form have been developed following the OPM, MSPB, and DOJ "Best Practice" guidelines for reference checking.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1000 respondents will utilize the form, and it will take each respondent approximately 60 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1000 hours, which is equal to 1000 (total # of annual responses) * 60 minutes.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: November 28, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017-25879 Filed 11-30-17; 8:45 am]

BILLING CODE 4410-04-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Decisions on States' Applications for Relief From Tax Credit Reductions Provided Under Section 3302 of the Federal Unemployment Tax Act (FUTA) Applicable in 2017

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Sections 3302(c)(2)(A) and 3302(d)(3) of the FUTA provide that employers in a State that has an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if a balance of advances remains at the beginning of November 10 of that year. Further, section 3302(c)(2)(C) of FUTA provides for an additional credit reduction for a year if a State has outstanding advances on five or more consecutive January firsts and has a balance at the beginning of November 10 for such years. Section 3302(c)(2)(C) also provides for waiver of this additional credit reduction and substitution of the credit reduction provided in section 3302(c)(2)(B) if a state meets certain conditions.

California and Virgin Islands were potentially liable for the additional credit reduction and applied for a waiver of the 2017 additional credit reduction under section 3302 (c)(2)(C) of FUTA. It has been determined that each one met all of the criteria of that section

necessary to qualify for the waiver of the additional credit reduction. Further, the additional credit reduction of section 3302(c)(2)(B) is zero for California and Virgin Islands for 2017. Therefore, employers in California and Virgin Islands will have no additional credit reduction applied for calendar year 2017.

As a result of having passed eight consecutive January 1's with an outstanding Title XII advances and not having repaid the balance as of November 10, 2017, both California and Virgin Islands are subject to a FUTA credit reduction of 2.1 percent.

Nancy M. Rooney,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 2017-25923 Filed 11-30-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Request for Comments; Consumer Expenditure Surveys: Quarterly Interview and Diary

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, "Consumer Expenditure Surveys: Quarterly Interview and Diary," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1220-002 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Consumer Expenditure Surveys: Quarterly Interview and Diary. The BLS uses the Consumer Expenditure Surveys to gather information on expenditures, income, and other related subjects. The data is updated periodically in the national Consumer Price Index. In addition, the data is used by a variety of researchers in academia, government agencies, and the private sector. The data is collected from a national probability sample of households designed to represent the total civilian non-institutional population. The purpose of this revision request is to make changes to the two Consumer Expenditure (CE) Surveys: The Quarterly Interview Survey (CEQ) and the Diary Survey (CED) as part of an ongoing effort to improve data quality, maintain or increase response rates, and reduce data collection costs. The Census Authorizing Statute and BLS Authorizing Statute authorize this information collection. See 13 U.S.C. 8b and 29 U.S.C. 2.

The ICR has been characterized as a revision for several reasons. More specifically, three major changes are proposed for the CED. (1) In an effort to alleviate burden and improve response rates, an alternative version of the paper CED has been developed. The new version consolidates the four main diary categories into two, facing, diary pages so that all expenses for a single day can be entered without flipping pages. An effort was also made to reduce the amount of instructions and examples so that respondents are not confused or intimidated. (2) The earliest placement date and last placement date restrictions for the Diary will be removed allowing

Field Representatives to place the diary on any day within the collection month. (3) In order to simplify procedures and reduce costs, all Diaries will be double placed. As a result, the second Field Representative interview to pick up the Week 1 Diary and place the Week 2 Diary will be eliminated. Additionally, the CE will delete several tax questions that were deleted from CEQ in 2015 as data received from the IRS have enabled CE to calculate this data rather than collect it. Several changes will also be implemented in CEQ in order to keep the CEQ questionnaire current. These changes include changes to question wording, deletions, additions, and section restructurings.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0050. The current approval is scheduled to expire on June 30, 2019; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 30, 2016 (81 FR 42731).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0050. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Consumer Expenditure Surveys: Quarterly Interview and Diary.

OMB Control Number: 1220-0050.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 13,927.

Total Estimated Number of Responses: 57,732.

Total Estimated Annual Time Burden: 56,718 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 28, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25925 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Annual Refiling Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, "Annual Refiling Survey," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the

RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201708-1220-005 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064 (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064 (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks OMB approval for revisions to the Annual Refiling Survey (ARS). The ARS is used in conjunction with the BLS Quarterly Census of Employment and Wages (QCEW) program. The primary purpose of the ARS is to verify or to correct the North American Industry Classification System (NAICS) code assigned to establishments as well as to obtain accurate mailing and physical location addresses of establishments. As a result, changes in the industrial and geographical compositions of the economy are captured in a timely manner and reflected in BLS statistical programs. The QCEW program provides data necessary to administer State Unemployment Insurance systems. QCEW data accurately reflect the extent of coverage of the State UI laws and are used for determining UI total and taxable wages rates and for other purposes. Federal, State, and local government officials as well as private researchers depend on accurate geographical and industrial coding based on the NAICS Manual. This ICR has been classified as a revision because BLS will increase efforts to collect information from more establishments that are in NAICS Code 999999. These are unclassified establishments (NCA) for which there is no information

currently available about their industrial activities. Online collection has made it easier to pursue data from unclassified establishments and more NCA contacts are attempted than in past years. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0032. The current approval is scheduled to expire on December 31, 2017; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 21, 2017 (82 FR 33928).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0032. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Annual Refiling Survey.

OMB Control Number: 1220-0032.

Affected Public: Private Sector—businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 998,107.

Total Estimated Number of Responses: 998,107.

Total Estimated Annual Time Burden: 109,881 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25864 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Census of Employment and Wages

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Quarterly Census of Employment and Wages," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201708-1220-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064 (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064 (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Quarterly Census of Employment and Wages information collection. The BLS uses QCEW data provided by State Workforce Agencies as a sampling frame for establishment surveys; for publishing accurate current estimates of employment for the U.S., States, counties, and metropolitan areas; and for publishing quarterly census totals of local establishment counts, employment, and wages. The Bureau of Economic Analysis uses the data to produce accurate personal income data in a timely matter for the U.S., States, and local areas. Finally, the data is critical to the Employment Training Administration in administering unemployment insurance program. BLS Authorizing Statute and the Wagner-Peyser Act of 1933 section 15 authorizes this information collection. *See* 29 U.S.C. 1, 2, and 491-2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0012.

OMB authorization for an ICR cannot be for more than three (3) years without

renewal, and the current approval for this collection is scheduled to expire on November 30, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 1, 2017 (82 FR 35825).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0012. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Quarterly Census of Employment and Wages.

OMB Control Number: 1220-0012.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 890,240 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25862 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement," to the Office of Management and Budget (OMB) for review and approval for reinstatement, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201706-1220-003 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-6881 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to reinstate a previously approved information collection. BLS conducts the Current Population Survey Displaced Worker, Job Tenure, and Occupational Mobility supplement biennially, and the supplement was last collected in January 2016. This supplement gathers information on workers who have lost or left their jobs because their plant or company closed or moved, there was insufficient work for the workers to perform, or their position or shift was abolished. The BLS will collect data on the extent to which displaced workers received advance notice of job cutbacks or the closing of their plant or business. The supplement also gathers data on the types of jobs reemployed workers have found and will compare current earnings with those from the lost job. In addition, the supplement will query for the incidence and nature of occupational changes in the preceding year. The survey also probes for the length of time workers, including those who have not been displaced, have been with their current employer. The BLS will collect additional data on the receipt of unemployment compensation, the loss of health insurance coverage, and the length of time spent without a job.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on June 19, 2017 (82 FR 27875).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0104. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

OMB Control Number: 1220-0104.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 55,000.

Total Estimated Number of Responses: 55,000.

Total Estimated Annual Burden Hours: 7,333.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25865 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Leave Supplement to the American Time Use Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Leave Supplement to the American Time Use Survey," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201706-1220-009 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Leave Supplement to the American Time Use Survey information collection. The information collected will be published as a public use data set to facilitate research on numerous topics, such as: Characteristics of people with paid and unpaid leave; occupations with the greatest and least access to paid leave; reasons workers are able to take leave from their jobs; how many workers have access to job flexibilities such as working from home and flexible hours, and the relationship between workers' time use and access to job flexibilities. The BLS Authorizing Statute authorizes this information collection. See 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is

approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0191.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2018; however, the prior approval did not specifically mention a 2018 data collection. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 10, 2017 (82 FR 31787).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0191. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Leave Supplement to the American Time Use Survey.

OMB Control Number: 1220-0191.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 5,490.

Total Estimated Number of Responses: 5,490.

Total Estimated Annual Time Burden: 458 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25861 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quick Business Survey Operations Test; Office of the Secretary

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) proposal titled, "Quick Business Survey Operations Test," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-122-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not

required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for the proposed information collection titled, Quick Business Survey Operations Test (QBS). BLS will conduct the test to evaluate QBS survey processes and operations in a possible production environment. A QBS would allow the BLS to collect information about the U.S. economy in a more efficient manner than is currently possible and would allow data users to understand the impacts of specific events on the economy in a timely manner. The BLS Authorizing Statute authorizes this information collection. See 29 U.S.C. 1, 2.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the *Federal Register* on July 10, 2017 (82 FR 31786).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the *Federal Register*. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201709-1220-001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-BLS.

Title of Collection: Quick Business Survey Operations Test.

OMB ICR Reference Number: 201709-1220-001.

Affected Public: Private Sector—businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 10,932.

Total Estimated Number of Responses: 10,932.

Total Estimated Annual Time Burden: 1,093 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-25863 Filed 11-30-17; 8:45 am]

BILLING CODE 4510-24-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA-2018-007]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS-PAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of advisory committee meeting.

SUMMARY: We are announcing the following committee meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS-PAC).

DATES: The meeting will be held on January 24, 2017, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Jefferson Room, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT:

Robert J. Skwirot, Senior Program Analyst, by mail at ISOO, National Archives Building; 700 Pennsylvania Avenue NW., Washington, DC 20408, by telephone at (202) 357-5398, or by email at robert.skwirot@nara.gov. Contact ISOO at ISOO@nara.gov.

SUPPLEMENTARY INFORMATION: We announce advisory committee meetings in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101-6.

The purpose of this meeting is to discuss matters relating to the Classified National Security Information Program for state, local, tribal, and private sector entities.

The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Wednesday, January 17, 2017. ISOO will provide additional instructions for accessing the meeting's location.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2017-25850 Filed 11-30-17; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 2, 2018. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT:

Nature McGinn, ACA Permit Officer, at the above address, 703-292-8030, or ACApermits@nsf.gov.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541, 45 CFR part 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2018-027

1. *Applicant:* Bradford Clement, JOIDES Resolution Science Operator, International Ocean Discovery Program, Texas A&M University, College Station, TX 77845.

Activity for Which Permit is Requested: Waste Management. The applicant is seeking a waste management permit for activities associated with conducting four International Ocean Discovery Program (IODP) expeditions in the Antarctic and Southern Ocean waters. The applicant proposes to release or potentially release beacon weights, drilling mud, rotary core barrel coring bits, free fall funnels/re-entry cones, borehole casing, wiper pigs, and small amounts of fluorescent microspheres as a result of the normal operations of the *JOIDES Resolution* ocean drilling ship. Other standard hardware lowered below or over the side of the vessel would be retrieved, but may be subject to unintentional release.

Location: Ross Sea, Amundsen Sea, Scotia Sea, Southern Ocean, Antarctica.

Dates of Permitted Activities: January 4, 2018–July 20, 2019.

Permit Application: 2018-029

2. *Applicant:* Stephen C. Riser, School of Oceanography, University of Washington, Seattle WA 98195.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to release five Argo floats in the Southern Ocean in the general vicinity of 0 degrees (the Date Line) and 65 degrees South, in the Weddell Sea. The floats will be deployed from the German research vessel *Polarstern*. These floats will collect profiles of temperature and salinity as a function of pressure in the upper 2000 m of the water column at

10-day intervals, and drift at a depth of 1000 m between profiles. Each float will transmit a file of data consisting of temperature, salinity, and dissolved oxygen from depths of 0–2000 m in the water column at 10 day intervals. The floats will continue to operate in this manner over a period of 5–6 years. The floats are fabricated with aluminum hulls and contain lithium batteries. The data that they product has been crucial to assessing warming and climate change in the Southern Ocean and Antarctic. The data will be publicly available in near real-time from the Argo Global Data Assembly Center.

Location: Weddell Sea, Antarctica.

Dates of Permitted Activities: January 1–March 31, 2018.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2017-25853 Filed 11-30-17; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Environmental Research and Education (9487).

Date and Time: January 5, 2018; 3:00 p.m. (EST)–5:00 p.m. (EST).

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Teleconference).

Type of Meeting: Open.

Contact Person: Dr. Leah Nichols, Staff Associate, Office of Integrative Activities, Office of the Director; National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (Email: lnichol@nsf.gov; Telephone: (703) 292-2983).

Minutes: May be obtained from <https://www.nsf.gov/ere/ereweb/minutes.jsp>.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: To discuss subcommittee work and prepare for future advisory committee activities. Updated agenda and teleconference link will be available at <https://www.nsf.gov/ere/ereweb/minutes.jsp>.

Dated: November 27, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017-25851 Filed 11-30-17; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date and Time:

December 14, 2017; 12:30 p.m. to 5:30 p.m.
December 15, 2017; 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Suite E 3450, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Kajuana Mayberry, National Science Foundation, 2415 Eisenhower Avenue, Suite C 10000, Alexandria, VA 22314; Telephone: 703–292–4616.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the NSF Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda:

- Welcome and CISE updates
- Program updates for the CISE division of Information and Intelligent Systems and collaboration with the Directorate of Social, Behavioral, and Economic Sciences (SBE)
- Activities update: Computer Science (CS) Undergraduate Education
- Working group breakout sessions and report outs: Future of Work at the Human-Technology Frontier (FW-HTF)
- Closing remarks and wrap-up

Dated: November 28, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–25894 Filed 11–30–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Central Chilled Water System Optimization Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the

certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 93 and 92 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on October 20, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated April 27, 2017, as supplemented by letter dated August 3, 2017 (ADAMS Accession Nos. ML17118A049 and ML17215B187, respectively).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: Chandu.Patel@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The NRC is granting an exemption from paragraph B of section III, “Scope and Contents,” of appendix D, “Design Certification Rule for the AP1000,” to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 93 and 92 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, “Processes for Changes and Departures,” appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the plant-specific Design Control Document (DCD) Tier 2 information, and involves changes to related plant-specific DCD Tier 1 information, with corresponding changes to the associated COL appendix C information. The proposed changes revise the COLs concerning the minimum chilled water flowrates to the supply air handling units serving the main control room and the Class 1E electrical rooms, and the unit coolers serving the normal residual heat removal system and chemical and volume control system makeup pump rooms.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17208A163.

Identical exemption documents (except for referenced unit numbers and

license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF-91 and NPF-92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17205A478 and ML17205A479, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF-91 and NPF-92 are available in ADAMS under Accession Nos. ML17205A476 and ML17205A477, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated April 27, 2017, as supplemented by letter dated August 3, 2017, Southern Nuclear Operating Company, Inc., (licensee) requested from the NRC an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, "Design Certification Rule for the AP1000 Design," as part of license amendment request (LAR) 17-015, "Central Chilled Water System (VWS) Optimization Changes."

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17208A163, the Commission finds that:

- A. The exemption is authorized by law;
- B. the exemption presents no undue risk to public health and safety;
- C. the exemption is consistent with the common defense and security;
- D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;
- E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and
- F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated April 27, 2017,

as supplemented by letter dated August 3, 2017. This exemption is related to, and necessary for the granting of License Amendment Nos. 93 (Unit 3) and 92 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17208A163), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated April 27, 2017 (ADAMS Accession No. ML17118A049), as supplemented by letter dated August 3, 2017 (ADAMS Accession No. ML17215B187), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF-91 and NPF-92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on June 19, 2017 (82 FR 27891). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on April 27, 2017, as supplemented by letter dated August 3, 2017.

The exemption and amendment were issued on October 20, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17205A473).

Dated at Rockville, Maryland, this 28th day of November 2017.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,
Chief, Licensing Branch 4, Division of New
Reactor Licensing, Office of New Reactors.
[FR Doc. 2017-25924 Filed 11-30-17; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-336 and 50-423; License Nos. DPR-65 and NPF-49; EA-17-077; NRC-2017-0224]

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to Dominion Energy Nuclear Connecticut, Inc. (Dominion) to memorialize the agreement reached during an alternative dispute resolution mediation session held on September 20, 2017. This Order will resolve the issue that was identified during an NRC investigation of actions by a (former) contractor security officer at Dominion's Millstone Power Station whom the NRC determined did not: (1) Perform required maintenance of site weapons; and (2) properly conduct monthly inventories of out of service weapons. The Confirmatory Order is effective upon issuance.

DATES: The Order was issued on November 21, 2017.

ADDRESSES: Please refer to Docket ID NRC-2017-0224 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0224. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the

ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Marjorie M. McLaughlin, Region I, U.S. Nuclear Regulatory Commission, 2100 Renaissance Blvd. King of Prussia, PA 19140; telephone: 610–337–5240, email: Marjorie.McLaughlin@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 21st day of November 2017.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Regional Administrator.

United States of America

Nuclear Regulatory Commission

In the Matter of: Dominion Energy Nuclear Connecticut, Inc.

Docket Nos. 05000336 & 05000423

License Nos. DPR–65 and NPF–49

EA–17–077

Confirmatory Order
(Effective Immediately)

I

Dominion Nuclear Connecticut, Inc. (Dominion)¹ is the holder of operating reactor License No. DPR–65 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR part 50 on September 26, 1975, and renewed on November 28, 2005, and NPF–49 issued by the NRC pursuant to 10 CFR part 50 on January 31, 1986, and renewed on November 28, 2005. The licenses authorize the operation of Millstone Power Station Units 2 and 3 (Millstone) in accordance with conditions specified

therein. Millstone is located on the Licensee’s site in Waterford, Connecticut.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 20, 2017.

II

On August 31, 2016, the NRC Office of Investigations (OI), Region I Field Office opened an investigation (OI Case No. 1–2016–019) to evaluate whether a contract security officer working for G4S Secure Solutions USA, Inc. as an Armorer at Millstone deliberately failed to perform assigned duties pertaining to the accountability, testing, and maintenance of site response weapons and falsified related records. The investigation was completed on April 27, 2017, and the results documented in OI Report No. 1–2016–019. Based on the evidence developed during the investigation, the NRC concluded that the contract security officer: (1) Deliberately failed to perform assigned duties pertaining to the testing, maintenance, and accountability of site response weapons; and (2) deliberately falsified related records.

Specifically, OI identified numerous discrepancies on a number of weapons maintenance records from between January 2015 and June 2016, where the contract security officer indicated that (s)he had performed test-firing, cleaning, or maintenance activities for weapons on dates when (s)he, in fact, either had not worked or had not accessed the site Protected Area to retrieve the weapons from their staged locations.

The contract security officer indicated to OI that (s)he had been unable to keep up with his/her increasing workload, which led to his/her decision to not perform required tasks and to falsify related records. The contract officer testified to OI that (s)he had requested help with the Armorer function. The contract officer admitted to OI that (s)he had falsified some records to indicate that (s)he was meeting the required maintenance timeframes, without having performed the maintenance activities. The contract officer stated that (s)he usually performed the maintenance at some later point, but admitted that this may not have always happened. OI concluded that the contract officer deliberately failed to perform the required activities during this timeframe and created false records to indicate that (s)he had performed them.

OI also identified discrepancies with the out-of-service weapons inventory

records for January 2016, March 2016, April 2016, and May 2016. Specifically, OI identified that the recorded dates on which the January, March, and April inventories were completed were dates on which the contract security officer did not work. Additionally, OI identified that the April and May inventories listed weapons as being present at Millstone that were no longer on site.

The contract security officer testified to OI that (s)he must have made a mistake when (s)he documented the wrong dates. The contract officer also acknowledged to OI that (s)he had not individually reviewed the serial numbers of all out-of-service weapons when conducting the inventories and had just assumed the weapons were still onsite. The contract officer said this assumption had been based on the fact that the weapons had been packaged for shipment, and had been stored in a locked room to which only the contract officer possessed a key. However, the contract officer was the individual who had transported the weapons offsite, and should have known that they were no longer there. The contract officer acknowledged to OI that (s)he should have taken the time to account for the weapons that had already been transferred, but that (s)he had not done that. OI concluded that the contract officer deliberately failed to perform the inventories for those months and created false records when (s)he prepared the inventory logs.

The NRC determined that the contract security officer’s deliberate actions caused Dominion to be in violation of 10 CFR 73, Appendix B, Section VI.G, “Weapons, Personal Equipment, and Maintenance,” and the Millstone Security Plan. Specifically, 10 CFR 73, Appendix B, Section VI.G, “Weapons, Personal Equipment, and Maintenance,” Section 3(a), “Firearms maintenance program,” requires that each licensee shall implement a firearms maintenance and accountability program in accordance with the Commission regulations and the Commission-approved training and qualification plan. The Millstone Training and Qualification Plan is Appendix B to the site’s Physical Security Plan. Section 20, “Maintenance, Testing, and Calibration,” part 20.5, “Firearms,” states that a testing and maintenance program for all assigned firearms is established to ensure that the firearms and related accessories function as intended. The program is described in facility procedures. In particular, Dominion Security General Order GO–MP–0215, Rev. 5, “Weapons Maintenance Program,” constitutes the

¹ In a letter dated June 15, 2017 (ML17171A232), Dominion Nuclear Connecticut, Inc. notified the NRC that the company was changing its name to Dominion Energy Nuclear Connecticut, Inc., and requested that the NRC amend the Millstone operating licenses to reflect this change. The amendment request is currently under review by the NRC. The commitments in this Order apply to the entity that owns the licensed facilities, regardless of the entity’s name.

Millstone facility procedure for the testing, cleaning, and inspecting of security weapons, and requires that: all in-service weapons assigned to Millstone will be test fired on a semi-annual basis; weapons cleaning and maintenance shall occur after all test firing and also semi-annually by the Armorer; and the Armorer shall perform semi-annual weapons inspections. Additionally, Dominion Security General Order GO-MP-0202, Rev. 0, "Out of Service Weapons and Ammunition Accountability," constitutes the Millstone facility procedure for ensuring the accurate accountability of out of service weapons, magazines, and ammunition, and requires that the Armorer perform a monthly accountability of all out of service firearms, magazines, and ammunition.

The NRC determined that the contract security officer's deliberate actions also caused Dominion to be in violation of 10 CFR 50.9, which requires, in part, that information required by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects. Specifically, 10 CFR 73.70(e) requires that nuclear power reactor licensees shall keep documentation of all tests, inspections, and maintenance performed on required security related equipment for three years from the date of documenting the event. Information related to tests, inspections, and maintenance performed on weapons is material to the NRC because it is relied upon as documentation that they are in acceptable working condition. Information relating to the accountability of out of service weapons is material to the NRC because the proper accounting of weapons helps to ensure that these items have not been stolen or misplaced such that they could be used to defeat the Licensee's protective strategy.

By letter dated July 20, 2017, the NRC notified the Licensee of the results of the investigation with an opportunity to: (1) Provide a response in writing; (2) attend a pre-decisional enforcement conference; or (3) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's offer, the Licensee requested the use of the NRC's ADR process. On September 20, 2017, the NRC and the Licensee met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the

parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, the Licensee and the NRC reached a preliminary settlement agreement. The elements of the agreement include the following:

A. Items To Assure Restoration of Compliance

1. Within 30 days of the date of the Confirmatory Order, Dominion shall prepare a full inventory of all in-service and out-of-service weapons on-site. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the inventory list available to the NRC for review during an inspection.

2. Within 30 days of the date of the Confirmatory Order, Dominion shall prepare a report of the maintenance status of all in-service weapons that are on-site as of the date of the Confirmatory Order. The report shall specify the dates on which each weapon was last test-fired, cleaned, serviced, and inspected. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the report available to the NRC for review during an inspection.

B. Items To Address Wrongdoing

1. Within 30 days of the date of the Confirmatory Order, Dominion shall communicate this issue to all personnel at Millstone and other Dominion Energy, Inc. nuclear sites. The communication (which may be verbal or via written communication) shall specify that falsification of records is unacceptable and shall also explain the specific actions staff are expected to take when unable to fulfill NRC requirements. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the content of the communication available to the NRC for review during an inspection.

2. Within 10 days of the date of the Confirmatory Order, Dominion shall ensure that Dominion's records related to the former contract security officer's entry in the Personnel Access Data System includes information related to this case. Within 10 days of completing this action, Dominion shall inform the

NRC that the action is complete by notifying the Chief, Plant Support Branch 1, NRC Region I via telephone.

C. Items To Address Security Organization Weaknesses

1. Within 180 days of the date of the Confirmatory Order, Dominion shall perform an evaluation of its oversight of the security contract organization. The evaluation shall review reporting relationships, Licensee and contractor responsibilities for individual performance management, and the means in place to verify that regulatory requirements are being met. The evaluation shall consider what improvements can be made in these areas and specify any identified corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation available to the NRC for review during an inspection.

2. Within 90 days of completing the evaluation described in Item C.1, Dominion shall administer training to Dominion Security management staff at Millstone that focuses on roles and expectations for managing contractor staff and that reinforces Dominion's responsibility for assuring regulatory compliance. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the training materials available to the NRC for review during an inspection.

3. Within 120 days of the date of this Confirmatory Order, Dominion shall administer a safety culture survey to the Millstone security organization. Prior to administering the survey, Dominion shall retain a safety culture expert, external to the Dominion Energy Inc. organization, to review Dominion's root cause evaluation of this issue and evaluate the need to append to the survey additional questions to assess the current state of individual and organizational behaviors related to the root cause evaluation. The survey questions and results shall be retained by Dominion for one year after administration of the survey and shall be made available to the NRC for review during an inspection.

4. Within 240 days of the date of the Confirmatory Order, Dominion shall perform an organizational effectiveness evaluation of the Millstone security organization. The evaluation team shall be comprised of no more than 50% Dominion Energy Inc. nuclear employees, and the remaining

participants shall be from an outside organization (such as another utility or an industry group). The safety culture expert retained as described in Item C.3 shall be part of the evaluation team. The evaluation shall include a review of the results of the safety culture survey, including trending within the Millstone security organization and benchmarking with other Dominion Energy Inc. nuclear sites, along with the root cause evaluation, with particular emphasis on the traits of a healthy nuclear safety culture. It shall also include a review of the clarity for the security staff about lines of responsibility and reporting, and the performance and quality of how individual job performance results are evaluated, documented, and communicated. The evaluation shall result in an Action Plan that includes measures of effectiveness. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation and a copy of the Action Plan available to the NRC for review during an inspection.

D. Items To Address Armorer Function Weaknesses

1. Within 180 days of the date of the Confirmatory Order, Dominion shall evaluate its implementation of the Armorer function at Millstone. The evaluation shall include review of the staffing and responsibilities of the position, the methodology for tracking weapons maintenance status and activities, and supervisory involvement in verifying completion of required activities. The evaluation shall also include a comparison of Millstone's weapons maintenance processes (including the process for performing functionality checks and the standards for identifying degradation) versus other Dominion Energy Inc. nuclear sites and a sample of non-Dominion Energy Inc. nuclear sites. The evaluation shall identify best practices and consider any changes needed at Millstone and specify any identified corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation available to the NRC for review during an inspection.

2. Within 90 days of completing the evaluation described in Item D.1, Dominion shall communicate (which may be verbal or in writing) to Dominion Security management staff at Millstone the results of the evaluation and any completed or pending

corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the content of the communication available to the NRC for review during an inspection.

E. Items To Address Weapons Accountability Process Weaknesses

1. Within 180 days of the date of the Confirmatory Order, Dominion shall review its process for performing and recording in-service and out-of-service weapons inventory. The review shall include a comparison of Millstone's process versus other Dominion Energy Inc. nuclear sites and a sample of non-Dominion Energy Inc. nuclear sites. The evaluation shall identify best practices and consider any changes needed at Millstone and specify any identified corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation available to the NRC for review during an inspection.

F. Effectiveness Reviews

1. Within 90 days of the date of the Confirmatory Order, Dominion shall complete the first of four quarterly reviews of the effectiveness of the weapons maintenance program and of the corrective actions implemented in response to this issue. Within 30 days of completing the first such review, Dominion shall inform the NRC of the completion of the review by sending a letter to the Region I Administrator.

2. The effectiveness reviews discussed in Item F.1 shall be conducted by a team that includes an individual from outside the Dominion Energy Inc. nuclear fleet. For a period of one year after completion of the fourth review, the documented effectiveness reviews shall be made available to the NRC for review during an inspection.

G. External Communication

1. By December 31, 2019, Dominion shall discuss this issue, including the results of all of the above-listed evaluations and resulting corrective actions, to the following industry working groups: (a) The Nuclear Security Working Group; and (b) the 2019 National Nuclear Security Conference. The discussion shall include reference to any identified organizational weaknesses that Dominion determined contributed to the issue. Within 30 days of completing each discussion, Dominion shall inform

the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the presentation materials available to the NRC for one year after the presentation for review during an inspection.

H. Items to Which the NRC Has Agreed

1. In consideration of the above actions, the NRC agrees not to pursue any further enforcement action (including issuance of a civil penalty) relating to the notice of apparent violations (Case no. EA-17-077, Inspection Report Nos. 05000336/2017405 & 05000423/2017405, Office of Investigations Report No. 1-2016-019), dated July 20, 2017.

2. The NRC agrees that the Confirmatory Order documenting the above items will not be considered an escalated enforcement action by the NRC for future assessment of violations occurring at Millstone Power Station Units 2 and 3.

3. In the event of the transfer of the operating licenses of Millstone Power Station Units 2 and 3 to another entity, the commitments hereunder shall survive any transfer of ownership and will be binding on the new Licensee.

On November 13, 2017, Dominion consented to issuing this Order with the commitments, as described in Section V below. Dominion further agreed that this Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that Dominion's commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dominion's commitments be confirmed by this Confirmatory Order. Based on the above and Dominion's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50 and 10 CFR part 73, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT LICENSE NO. DPR-65 AND LICENSE NO. NPF-49 ARE MODIFIED AS FOLLOWS:

A. Items To Assure Restoration of Compliance

1. Within 30 days of the date of the Confirmatory Order, Dominion shall prepare a full inventory of all in-service and out-of-service weapons on-site. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the inventory list available to the NRC for review during an inspection.

2. Within 30 days of the date of the Confirmatory Order, Dominion shall prepare a report of the maintenance status of all in-service weapons that are on-site as of the date of the Confirmatory Order. The report shall specify the dates on which each weapon was last test-fired, cleaned, serviced, and inspected. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the report available to the NRC for review during an inspection.

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1. Within 180 days of the date of the Confirmatory Order, Dominion shall perform an evaluation of its oversight of the security contract organization. The evaluation shall review reporting relationships, Licensee and contractor

responsibilities for individual performance management, and the means in place to verify that regulatory requirements are being met. The evaluation shall consider what improvements can be made in these areas and specify any identified corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation available to the NRC for review during an inspection.

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4. Within 240 days of the date of the Confirmatory Order, Dominion shall perform an organizational effectiveness evaluation of the Millstone security organization. The evaluation team shall be comprised of no more than 50% Dominion Energy Inc. nuclear employees, and the remaining participants shall be from an outside organization (such as another utility or an industry group). The safety culture expert retained as described in Item C.3 shall be part of the evaluation team. The evaluation shall include a review of the results of the safety culture survey, including trending within the Millstone security organization and benchmarking with other Dominion Energy Inc. nuclear sites, along with the root cause evaluation, with particular emphasis on

the traits of a healthy nuclear safety culture. It shall also include a review of the clarity for the security staff about lines of responsibility and reporting, and the performance and quality of how individual job performance results are evaluated, documented, and communicated. The evaluation shall result in an Action Plan that includes measures of effectiveness. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation and a copy of the Action Plan available to the NRC for review during an inspection.

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1. Within 180 days of the date of the Confirmatory Order, Dominion shall evaluate its implementation of the Armorer function at Millstone. The evaluation shall include review of the staffing and responsibilities of the position, the methodology for tracking weapons maintenance status and activities, and supervisory involvement in verifying completion of required activities. The evaluation shall also include a comparison of Millstone's weapons maintenance processes (including the process for performing functionality checks and the standards for identifying degradation) versus other Dominion Energy Inc. nuclear sites and a sample of non-Dominion Energy Inc. nuclear sites. The evaluation shall identify best practices and consider any changes needed at Millstone and specify any identified corrective actions. Within 30 days of completing this action, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the results of the evaluation available to the NRC for review during an inspection.

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2. The effectiveness reviews discussed in Item F.1 shall be conducted by a team that includes an individual from outside the Dominion Energy Inc. nuclear fleet. For a period of one year after completion of the fourth review, the documented effectiveness reviews shall be made available to the NRC for review during an inspection.

F. External Communication

1. By December 31, 2019, Dominion shall discuss this issue, including the results of all of the above-listed evaluations and resulting corrective actions, to the following industry working groups: (a) The Nuclear Security Working Group; and (b) the 2019 National Nuclear Security Conference. The discussion shall include reference to any identified organizational weaknesses that Dominion determined contributed to the issue. Within 30 days of completing each discussion, Dominion shall inform the NRC that the action is complete by sending a letter to the Region I Administrator and shall make the presentation materials available to the NRC for one year after the presentation for review during an inspection.

In the event of the transfer of the operating licenses of Millstone Power

Station Units 2 and 3 to another entity, the commitments set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license. The Regional Administrator, Region I may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Dominion, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (Even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic

docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "Cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties prior to the hearing.

If a person (other than Dominion) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected

by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

Dated this 21st day of November, 2017.

Daniel H. Dorman,

Regional Administrator.

[FR Doc. 2017-25866 Filed 11-30-17; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2008-0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Consistency Update to the Raceway Separation Requirements in the Main Control Room and Remote Shutdown Room

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 88 and 87 to Combined Licenses (COL), NPF-91 and NPF-92, for the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on September 27, 2017.

ADDRESSES: Please refer to Docket ID NRC-2008-0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated March 8, 2017 (ADAMS Accession No. ML17067A517).

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5848; email: Bill.Gleaves@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, "Scope and Contents," of appendix D, "Design Certification Rule for the AP1000," to

part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 88 and 87 to COLs, NPF-91 and NPF-92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, "Processes for Changes and Departures," of appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report in the form of departures from the generic AP1000 DCD in the plant-specific DCD Tier 2 information.

With the requested amendment, dated March 8, 2017, (ADAMS Accession No. ML17067A517), Southern Nuclear Operating Company, Inc., (SNC/ licensee) requested that the NRC amend the COL for VEGP Units 3 and 4, COL Numbers NPF-91 and NPF-92, respectively. The amendment requested changes to the VEGP COL appendix C, Table 3.3-6 (and associated plant-specific Tier 1 table) to capture additional raceway separation configurations for the Main Control Room and Remote Shutdown Room as discussed in the VEGP Updated Final Safety Analysis Report. In addition to those changes, the licensee proposed editorial changes to improve the readability of the text by deleting one particular extraneous period that appears only in the plant-specific Tier 1 Table 3.3-6 and the word "except" in certain parts of the COL Appendix C Table 3.3-6 (and associated plant-specific Tier 1 table).

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The license amendment was found to be acceptable as well. The safety evaluation is available in ADAMS under Accession No. ML17206A414.

Identical exemption documents (except for referenced unit numbers, license numbers and amendment numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF-91 and NPF-92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17206A416 and ML17206A415,

respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF-91 and NPF-92 are available in ADAMS under Accession Nos. ML17206A418 and ML17206A417, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Unit 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated March 8, 2017, Southern Nuclear Operating Company requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, "Design Certification Rule for the AP1000 Design," as part of license amendment request (LAR) 17-007, "Consistency Update to the Raceway Separation Requirements in the Main Control Room and Remote Shutdown Room."

For the reasons set forth in Section 3.1 of the NRC staff's safety evaluation, which can be found at ADAMS Accession No. ML17206A414, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated March 8, 2017. This exemption is related to, and necessary for, the granting of License Amendment [Nos. 88 and 87 for Units 3 and 4, respectively], which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17206A414), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated March 8, 2017, (ADAMS Accession No. ML17067A517), Southern Nuclear Operating Company, Inc., (SNC/ licensee) requested that the U.S. Nuclear Regulatory Commission (NRC) amend the combined licenses (COL) for Vogtle Electric Generating Plant (VEGP) Units 3 and 4, COL Numbers NPF-91 and NPF-92, respectively. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on April 25, 2017 (82 FR 19105). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested by letter dated March 8, 2017. The exemption and amendment were issued on September 27, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17206A413).

Dated at Rockville, Maryland, this 27th day of November 2017.

For the Nuclear Regulatory Commission.
Jennifer Dixon-Herrity,
*Chief, Licensing Branch 4, Division of New
 Reactor Licensing, Office of New Reactors.*
 [FR Doc. 2017-25867 Filed 11-30-17; 8:45 am]
BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for OMB review and approval and requests public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within thirty (30) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336-8558.

SUPPLEMENTARY INFORMATION: OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** volume 82 page 44860 on September 26, 2017. All mailed comments and requests for copies of the subject form should include form number OPIC-254 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to James.Bobbitt@opic.gov, subject line OPIC-254.

Summary Form Under Review

Type of Request: Revision of a currently approved information collection.

Title: Personal Financial Statement.
Form Number: OPIC-254.

Frequency of Use: Up front—one per individual investor/guarantor per project.

Type of Respondents: Individuals.
Standard Industrial Classification Codes: N/A.

Description of Affected Public: U.S. and foreign citizens investing in projects overseas.

Reporting Hours: 75 hours (1 hour per response).

Number of Responses: 75 per year.

Federal Cost: \$4,026.

Authority for Information Collection: Sections 231 and 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The personal financial statement is supporting documentation to the OPIC application for financing (OPIC-115). The information provided is used by OPIC to determine if individuals who are providing equity investment in or credit support to a project have sufficient financial wherewithal to meet their expected obligations under the proposed terms of the OPIC financing.

Dated: November 27, 2017.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2017-25858 Filed 11-30-17; 8:45 am]

BILLING CODE 3210-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2012-23; MC2018-32 and CP2018-62; MC2018-33 and CP2018-63]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 4, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).*: CP2012-23; *Filing Title:* USPS Notice of Change in Prices Pursuant to Amendment to Parcel Select Contract 2; *Filing Acceptance Date:* November 22, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:*

Timothy J. Schwuchow; *Comments Due:* December 4, 2017.

2. *Docket No(s).*: MC2018–32 and CP2018–62; *Filing Title:* USPS Request to Add Priority Mail Contract 377 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 22, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Timothy J. Schwuchow; *Comments Due:* December 4, 2017.

3. *Docket No(s).*: MC2018–33 and CP2018–63; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 53 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 24, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 4, 2017.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2017–25852 Filed 11–30–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82155; File No. SR–IEX–2017–42]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 2.220(a)(7) and 11.410(a) To Reflect the Name Change of Bats BZX Exchange, Inc. to Cboe BZX Exchange, Inc., Bats EDGA Exchange, Inc. to Cboe EDGA Exchange, Inc., Bats EDGX Exchange, Inc. to Cboe EDGX Exchange, Inc., and Bats BYX Exchange, Inc. to Cboe BYX Exchange, Inc.

November 27, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on November 21, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b–4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to amend Rules 2.220(a)(7) and 11.410(a) to reflect the name change of Bats BZX Exchange, Inc. to Cboe BZX Exchange, Inc. (“Cboe BZX”), Bats EDGA Exchange, Inc. to Cboe EDGA Exchange, Inc. (“Cboe EDGA”), Bats EDGX Exchange, Inc. to Cboe EDGX Exchange, Inc. (“Cboe EDGX”), and Bats BYX Exchange, Inc. to Cboe BYX Exchange, Inc. (“Cboe BYX”). The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.⁷ The text of the proposed rule change is available at the Exchange’s Web site at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 2.220(a)(7) and 11.410(a) to reflect the name change of Bats BZX Exchange, Inc. to Cboe BZX,⁸ Bats EDGA

Exchange, Inc. to Cboe EDGA,⁹ Bats EDGX Exchange, Inc. to Cboe EDGX,¹⁰ and Bats BYX Exchange, Inc. to Cboe BYX.¹¹ IEX Rule 2.220(a)(7) lists the away trading centers that IEX Services LLC (“IEX Services”) routes to as outbound router for the Exchange. Rule 11.410(a) specifies the market data sources for each away trading center that the Exchange uses for necessary price reference points. The proposed changes are nonsubstantive and do not alter the manner in which orders are handled or routed by the Exchange.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹² of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is consistent with the Act to update the referenced rules to reflect the name changes of Cboe BZX, Cboe EDGA, Cboe EDGX, and Cboe BYX so that IEX’s rules accurately specify away markets referenced, as well as to avoid any potential confusion on the part of market participants. As noted in the Purpose section, the proposed changes are nonsubstantive and do not alter the manner in which orders are handled or routed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed correction does not impact competition in any respect since it is designed to simply update away market names.

⁹ See Securities Exchange Act Release No. 81957 (October 26, 2017), 82 FR 50716 (November 1, 2017) (SR–BatsEDGA–2017–28).

¹⁰ See Securities Exchange Act Release No. 81963 (October 26, 2017), 82 FR 50697 (November 1, 2017) (SR–BatsEDGX–2017–41).

¹¹ See Securities Exchange Act Release No. 81952 (October 26, 2017), 82 FR 50725 (November 1, 2017) (SR–BatsBYX–2017–27).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b–4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b–4(f)(6).

⁸ See Securities Exchange Act Release No. 81950 (October 26, 2017), 82 FR 50711 (November 1, 2017) (SR–BatsBZX–2017–70).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,¹⁴ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to update references to the names of away markets without delay, thus avoiding any potential confusion that may otherwise occur. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay so the Exchange's rules may immediately reflect the updated names of away markets. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2017-42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-IEX-2017-42. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at www.iextrading.com. All

comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-42 and should be submitted on or before December 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-25856 Filed 11-30-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 32922; File No. 812-14786; Ausdal Unit Investment Trust and Ausdal Financial Partners, Inc.

November 27, 2017.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(j) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered unit investment trusts ("UITs") to acquire shares of certain registered open-end investment companies, registered closed-end investment companies and registered UITs (collectively, the "Underlying Funds") that are within and outside the same group of investment companies as the acquiring UITs, in excess of the limits in section 12(d)(1) of the Act.

Applicants: Ausdal Unit Investment Trust (the "Trust"), a UIT that is or will be registered under the Act, and Ausdal Financial Partners, Inc. ("Ausdal"), an Iowa corporation registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act").

Filing Dates: The application was filed on June 20, 2017, and amended on October 27, 2017.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

¹⁴ The Exchange has fulfilled this requirement.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78s(b)(2)(B).

²¹ 17 CFR 200.30-3(a)(12).

Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 22, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 3250 Lacey Road, Suite 130, Downers Grove, IL 60515, and Morrison C. Warren, Walter L. Draney and Suzanne M. Russell, Chapman and Cutler LLP, 111 West Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915 or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) a Series¹ to acquire shares of Underlying Funds² in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Funds to the Series in excess of the limits in section 12(d)(1)(B) of the Act.³ Applicants also

request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Series.⁴ Applicants state that such transactions will be consistent with the policies of each Series and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same "group of investment companies" as the UIT through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the

investment companies that are not listed and traded on a national securities exchange.

⁴ A Series generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Series to purchase or redeem shares from the ETF. A Series will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds.

Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–25849 Filed 11–30–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 82 FR 56089, November 27, 2017.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Friday, December 1, 2017.

CHANGES IN THE MEETING: The following matter will also be considered during the 12 p.m. Closed Meeting scheduled for Friday, December 1, 2017: Formal orders of investigation.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 29, 2017.

Brent J. Fields,
Secretary.

[FR Doc. 2017–26103 Filed 11–29–17; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82156; File No. SR–OCC–2017–019]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, Concerning the Adoption of a New Minimum Cash Requirement for the Clearing Fund

November 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b–4 thereunder² notice is hereby given that on November 14, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹ Applicants request that the order apply to each existing and future series of the Trust and to any future registered UIT and series thereof sponsored by Ausdal or an entity controlling, controlled by or under common control with Ausdal (the "Series").

² Certain of the Underlying Funds may be registered as an open-end investment company or a UIT, but have received exemptive relief from the Commission to permit their shares to be listed and traded on a national securities exchange at negotiated prices and to operate as exchange-traded funds ("ETFs").

³ Applicants do not request relief for the Series to invest in reliance on the order in closed-end

change as described in Items I, II and III below, which Items have been prepared primarily by OCC. On November 22, 2017, OCC filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by the OCC would (1) revise OCC's By-Laws to adopt a new minimum cash requirement for the Clearing Fund; (2) revise OCC's By-Laws to provide for the pass-through of interest earned on Clearing Fund cash held in OCC's Federal Reserve bank account; (3) enact changes to OCC's Fee Policy that reflect the pass-through of interest earned on Clearing Fund cash held in OCC's Federal Reserve bank account; and (4) make certain conforming changes to OCC's Rules and By-Laws to affect the aforementioned changes.⁴ All terms with initial capitalization not defined here have the same meaning set forth in OCC's By-Laws and Rules.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC proposes to establish a minimum cash contribution requirement for its Clearing Fund in order to increase the amount of qualifying liquid resources available to OCC to account for extreme

scenarios that may result in liquidity demands exceeding OCC's current Cover 1 liquidity resources, as calculated under the current historically-based methodology, and provide for a more consistent level of cash resources in its available prefunded financial resources. The proposed rule change also would provide for the pass-through of interest income earned on such deposits to its Clearing Members. OCC's current practices and the proposed changes to such practices are described in more detail below.

Current Practice

Presently, Article VIII, Section 3(a) of OCC's By-Laws provides that Clearing Fund contributions shall be in the form of cash and Government securities, but neither OCC's By-Laws nor Rules provides a minimum cash requirement for contributions in the Clearing Fund. Article VIII, Section 4(a) of OCC's By-Laws allows for OCC to invest cash contributions to the Clearing Fund, partially or wholly, in OCC's account in Government securities, and to the extent that such contributions are not so invested they shall be deposited by OCC in a separate account or accounts for Clearing Fund contributions in approved custodians. Article VIII, Section 4(a) of OCC's By-Laws, however, presently does not account for the treatment of interest earned on cash deposits held in the OCC's Federal Reserve bank account.

Proposed Change

1. Minimum Cash Clearing Fund Requirement

OCC proposes to establish a minimum cash contribution requirement for its Clearing Fund in order to increase the amount of highly liquid resources available to OCC to account for extreme scenarios that may result in liquidity demands exceeding OCC's current Cover 1 liquidity resources, as calculated under the current historically-based methodology, and provide for a more consistent level of cash resources in its available prefunded financial resources.⁶ Specifically, the proposed rule change would require that Clearing Members collectively contribute \$3 billion in cash to the Clearing Fund ("Cash Clearing Fund Requirement"). Each Clearing

Member's proportionate share of the Cash Clearing Fund Requirement shall be equal in percentage to its proportionate share of the Clearing Fund as determined by the Clearing Fund allocation methodology in current Rule 1001.

OCC has historically sized its liquidity resources based on historically observed liquidity demands and analysis of potential large forecasted liquidity demands over at least the next twelve months. OCC forecasts its future daily settlement activity under normal market conditions (e.g., mark-to-market settlements, and settlements resulting from the expiration of derivatives contracts) and compares such demands to its resources to ensure that at all times it will maintain a positive liquidity position to meet settlement obligations.

OCC has performed an analysis of its stress liquidity demands based on a 1-in-70 year hypothetical market event. OCC started its analysis by selecting the largest historical peak monthly settlements that occurred over the historical look back period of data generated by the stress test system. It then also selected certain large non-expiration days to supplement the analysis. From this it estimated the mark-to-market and cash settled exercise and assignment obligations for the members driving the historical peak demand under the proposed stress tests scenario to determine the stressed peak demand. Through this analysis, OCC observed that peak stressed liquidity demands of the largest 1 or 2 members, which normally occur in conjunction with certain monthly expirations, can exceed the size OCC's committed liquidity facilities (which currently total \$3 billion). In these cases, while OCC did have cash in the Clearing Fund to supplement its liquidity resources, and the total of credit facilities and cash in the Clearing Fund did cover these peak stressed liquidity demands, OCC is unable to rely on these cash contributions to be present at any given time since there is no obligation on members to maintain any amount of their contribution in cash. As a result, OCC believes it is necessary to increase or otherwise ensure the availability of highly liquid resources in the Clearing Fund to account for extreme scenarios that may result in liquidity demands exceeding OCC's Cover 1 liquidity resources, as calculated under the current historically-based methodology. The proposed Cash Clearing Fund Requirement, when taken together with OCC's \$3 billion in committed liquidity facilities, would provide liquidity resources sufficient to cover 100% of

³ In Amendment No. 1, OCC modified the proposed change to Article VIII, Section 4(a) of the By-Laws to clarify that interest earned on Clearing Fund cash deposits held at a Federal Reserve Bank accruing to the benefit of Clearing Members would be calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits. OCC did not propose any other changes to the filing in Amendment No. 1.

⁴ OCC has filed an advance notice with the Commission in connection with this proposal. See SR-OCC-2017-808.

⁵ OCC's By-Laws and Rules can be found on OCC's public Web site: <http://optionsclearing.com/about/publications/bylaws.jsp>.

⁶ OCC's Current Cover 1 liquidity resources are sized based on the liquidity needed to address exposures derived solely from historical results. Introducing the Cash Clearing Fund Requirement would increase OCC's liquidity resources to address the exposures observed in a stress liquidity analysis performed using proposed sizing stress tests for OCC's Clearing Fund.

the peak stressed liquidity demands of the largest 1 or 2 members observed in OCC's analysis.

In addition, the proposed changes would allow OCC's Executive Chairman, Chief Administrative Officer ("CAO"), or Chief Operating Officer ("COO"), upon providing notice to the Risk Committee, to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund as determined in accordance with Rule 1001 for the month in question for the protection of OCC, clearing members or the general public. Any determination by the Executive Chairman, CAO and/or COO to implement a temporary increase in Clearing Fund size would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

The proposed rule change would require that any temporary increase in the Cash Clearing Fund Requirement be reviewed by the Risk Committee as soon as practicable, but in any event within 20 calendar days of the increase. In its review, the Risk Committee shall determine whether (1) the increase in the minimum Cash Clearing Fund Requirement is no longer required or (2) OCC's Clearing Fund contribution requirements and other related rules should be modified to ensure that OCC continues to maintain sufficient liquid resources to cover its largest aggregate payment obligations in extreme but plausible market conditions. In the event that the Risk Committee would determine to permanently increase the Cash Clearing Fund Requirement, OCC would initiate any regulatory approval process required to effect such a change.⁷ A Clearing Member will be required to satisfy any increase in its required cash contribution pursuant to an increase in the Cash Clearing Fund Requirement no later than one hour before the close of the Fedwire on the business day following OCC's issuance of an instruction to increase cash contributions.

These changes would be reflected in new paragraph (a)(i) of Section 3 of Article VIII of OCC's By-Laws, as well as in new Interpretation and Policy .04 to Section 3 of Article VIII.

⁷ However, OCC will not decrease the Cash Clearing Fund Requirement while the regulatory approvals for a change in the Cash Clearing Fund Requirement are being obtained to ensure that OCC continues to maintain sufficient liquid resources to cover its liquidity demands during that time.

2. Interest Pass Through for Clearing Fund Cash Held at the Federal Reserve

In connection with the proposed Cash Clearing Fund Requirement, substantially all of OCC's Clearing Fund deposits consisting of cash would be held in an account established by OCC at a Federal Reserve Bank.⁸ OCC proposes that it would pass the interest income earned in such account through to its Clearing Members. As a result, OCC proposes to revise Article VIII, Section 4(a) of OCC's By-Laws to include a sentence to provide that any interest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members (calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits), provided that such Clearing Members have provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment.⁹

3. Changes to the Fee Policy To Accommodate Interest Passed Through to Clearing Members

In order to accommodate the pass through of interest income, OCC would also amend its Fee Policy to add definitions for "Pass-Through Interest Revenue" and "Operating Expenses" to exclude from the calculation of the Business Risk Buffer projected interest revenue and expense, respectively, related to the pass-through of earned interest from OCC to Clearing Members.¹⁰ OCC also proposes to add a new example of the Business Risk Buffer calculation reflecting this change and make clarifying changes throughout the Policy to incorporate the use of the new defined terms. In addition, OCC proposes to amend the Fee Policy to remove references to "Proposed Rule 17Ad-22(e)(15)" to reflect the adoption of the Commission's Covered Clearing Agency Standards.

⁸ OCC notes that it would retain the discretion to maintain a small portion of Clearing Fund cash deposits in other accounts (e.g., accounts with commercial banks) for various reasons, including facilitating normal substitution activity by its Clearing Members.

⁹ Article VIII, Section 4(a) currently states that all interest gained on cash Clearing Fund deposits belongs to OCC.

¹⁰ While interest income earned by OCC from its Federal Reserve bank account would be passed on to its Clearing Members, OCC anticipates that it would charge a cash management fee to cover associated costs (i.e., administrative and similar costs). OCC would file a separate proposed rule change with the Commission, subject to receiving all necessary regulatory approvals for the proposed changes described herein, prior to implementing any cash management fee.

4. Conforming Changes

In conjunction with the aforementioned changes, OCC is also proposing to make four related conforming changes. First, OCC proposes to revise Interpretation and Policy .01 of Rule 1001 to reflect that the new minimum Clearing Fund size is \$3 billion (instead of \$1 billion) plus 110% of the size of OCC's committed liquidity facilities, which conforms to the proposed new minimum cash requirement for the Clearing Fund. Second, OCC proposes to amend the definition of "Approved Custodian" in Article I, Section 1 of the By-Laws to clarify that the Federal Reserve Bank may also be an Approved Custodian, to the extent it is available to OCC. Third, OCC is proposing to delete existing Article VIII, Section 4(b), regarding the establishment of a segregated funds account for cash contributions to the Clearing Fund. The segregated funds account allows a Clearing Member to contribute cash to a bank or trust company account maintained in the name of OCC, subject to OCC's exclusive control, but the account also includes the name of the Clearing Member and any interest accrues to the Clearing Member rather than OCC. OCC proposes to eliminate the account type because Clearing Members have not expressed interest in using such an account, no such accounts are in use today, and moving forward, substantially all cash Clearing Fund contributions will be held in OCC's account at the Federal Reserve Bank. Fourth, OCC proposes to introduce new language to Article VIII, Section 4(a) to clarify that cash contributions to the Clearing Fund that are deposited at approved custodians may be commingled with the Clearing Fund contributions of different Clearing Members.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act,¹¹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The proposed rule change is designed to improve the resiliency of OCC's liquidity resources by establishing a new \$3 billion minimum cash requirement for the Clearing Fund and by providing OCC authority to temporarily increase the Cash Clearing Fund Requirement from \$3 billion up to an amount that includes the size of the

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

Clearing Fund as determined in accordance with Rule 1001 for the month in question. The proposed rule change also is designed to improve the position of OCC's Clearing Members by permitting OCC to pass through interest earned on Clearing Fund cash deposits held at OCC's account with the Federal Reserve. In this regard, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.¹²

Additionally, Rule 17Ad-22(e)(7)¹³ requires that a covered clearing agency ("CCA") establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA. Rule 17Ad-22(e)(7)(i)¹⁴ requires CCAs to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by OCC by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day settlement, and where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of stress scenarios, that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. As explained above, OCC has performed an analysis of its stress liquidity demands using proposed sizing stress tests for the Clearing Fund and has observed that peak stressed liquidity demands of the largest 1 or 2 members, which normally occur in conjunction with certain monthly expirations, can exceed the size of OCC's committed liquidity facilities (which currently total \$3 billion). OCC believes that the proposed minimum \$3 billion Cash Clearing Fund Requirement will adjust OCC's available liquidity resources to account for extreme scenarios that may result in liquidity demands exceeding OCC's Cover 1 liquidity resources. In this regard, OCC believes the proposed Cash Clearing Fund Requirement is designed to satisfy the requirements of Rule 17Ad-22(e)(7)(i).¹⁵

Further, Rule 17Ad-22(e)(7)(viii)¹⁶ requires that a CCA address foreseeable liquidity shortfalls that would not be covered by its liquid resources and Rule 17Ad-22(e)(7)(ix)¹⁷ requires that a CCA describe its process to replenish any liquid resources that it may employ during a stress event. OCC believes that the proposed authority to temporarily increase the minimum cash requirement from \$3 billion up to an amount that includes the size of the Clearing Fund (as determined in accordance with Rule 1001 for the month in question) would provide OCC with an additional means of addressing liquidity shortfalls that otherwise would not be covered by OCC's liquid resources. Further, because the Clearing Fund is a resource that is replenished in accordance with Section 6 of Article VIII of OCC's By-Laws, to the extent that Clearing Members are required to replenish their required contributions—in whole or in part—with cash following a proportionate charge during, the proposed change would provide a form of replenishment of OCC's liquid resources. In this regard, OCC believes the proposed authority to require up to an all cash Clearing Fund requirement is designed to satisfy the requirements of Rules 17Ad-22(e)(7)(viii) and (ix).¹⁸

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹⁹ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. The primary purpose of the proposed rule change is to enhance OCC's liquidity resources by establishing a \$3 billion Cash Clearing Fund Requirement, which requirement could be temporarily increased up to an amount that includes the size of the Clearing Fund as determined in accordance with Rule 1001 for the month in question. Further, the proposed rule change is designed to revise Article VIII, Section 4(a) of OCC's By-Laws and the Fee Policy to enable OCC to pass through interest earned on Clearing Fund cash held in OCC's Federal Reserve bank account. The

proposed rule change would apply equally to all Clearing Members and would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2017-019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2017-019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

¹² *Id.*

¹³ 17 CFR 240.17Ad-22(e)(7).

¹⁴ 17 CFR 240.17Ad-22(e)(7)(i).

¹⁵ 17 CFR 240.17Ad-22(e)(7)(i).

¹⁶ 17 CFR 240.17Ad-22(e)(7)(viii).

¹⁷ 17 CFR 240.17Ad-22(e)(7)(ix).

¹⁸ 17 CFR 240.17Ad-22(e)(7)(viii) and (ix).

¹⁹ 15 U.S.C. 78q-1(b)(3)(I).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_019.pdf.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2017-019 and should be submitted on or before December 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-25857 Filed 11-30-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32921]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 27, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2017. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons

may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549-8010.

NB Crossroads Private Markets Fund IV (TE)—Custody Client LLC [File No. 811-23169]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on October 10, 2017 and amended on October 20, 2017.

Applicant's Address: 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

NB Crossroads Private Markets Fund IV (TI)—Custody Client LLC [File No. 811-23115]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on October 10, 2017 and amended on October 20, 2017.

Applicant's Address: 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

Cushing MLP Infrastructure Fund II [File No. 811-23093]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 13, 2017 and October 25, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$800 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on October 27, 2017.

Applicant's Address: 8117 Preston Road, Suite 440, Dallas, Texas 75225.

Deutsche Global High Income Fund, Inc. [File No. 811-06671]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 18, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$8,516.98 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on November 7, 2017.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

Pacholder High Yield Fund, Inc. [File No. 811-05639]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 11, 2017 and August 29, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$54,878 incurred in connection with the liquidation were paid by the applicant. Applicant has retained approximately \$225,000 in cash as well as other assets in approximately the amount of \$10,000 for the purpose of paying liabilities and expenses incurred by the applicant as it concludes operations.

Filing Date: The application was filed on November 14, 2017.

Applicant's Address: 270 Park Avenue, New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-25848 Filed 11-30-17; 8:45 am]

BILLING CODE P

²⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, December 7, 2017 at 9:30 a.m. (ET).

PLACE: The meeting will be held in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549.

STATUS: This meeting will begin at 9:30 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at www.sec.gov.

MATTERS TO BE CONSIDERED: On November 9, 2017, the Commission issued notice of the Committee meeting (Release No. 33-10435), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Remarks from Commissioners; a discussion of a recommendation of the Investor as Purchaser Subcommittee regarding electronic delivery of information to retail investors; a discussion regarding retail investor protections and transparency in municipal and corporate bond markets; a discussion regarding cybersecurity risk disclosures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding dual-class share structures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding retail investor disclosure: What works, what doesn't, and best practices; subcommittee reports; and a nonpublic administrative work session during lunch.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: November 29, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017-26102 Filed 11-29-17; 4:15 pm]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15320 and #15321; US VIRGIN ISLANDS Disaster Number VI-00011]

Presidential Declaration Amendment of a Major Disaster for the US Virgin Islands

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the US Virgin Islands (FEMA-4340-DR), dated 09/20/2017.

Incident: Hurricane Maria.

Incident Period: 09/16/2017 through 09/22/2017.

DATES: Issued on 11/22/2017.

Physical Loan Application Deadline Date: 12/18/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the US Virgin Islands, dated 09/20/2017, is hereby amended to establish the incident period for this disaster as beginning 09/16/2017 through 09/22/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017-25909 Filed 11-30-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15342 and #15343; US VIRGIN ISLANDS Disaster Number VI-00012]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the US Virgin Islands

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the US Virgin Islands (FEMA-4340-DR), dated 10/05/2017.

Incident: Hurricane Maria.

Incident Period: 09/16/2017 through 09/22/2017.

DATES: Issued on 11/22/2017.

Physical Loan Application Deadline Date: 12/04/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 07/05/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the US Virgin Islands, dated 10/05/2017, is hereby amended to establish the incident period for this disaster as beginning 09/16/2017 through 09/22/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017-25902 Filed 11-30-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15399 and #15400; MISSISSIPPI Disaster Number MS-00104]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Mississippi (FEMA-4350-DR), dated 11/22/2017.

Incident: Hurricane Nate.

Incident Period: 10/06/2017 through 10/10/2017.

DATES: Issued on 11/22/2017.

Physical Loan Application Deadline Date: 01/22/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 08/22/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/22/2017, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: George, Greene, Harrison, Jackson

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 153998 and for economic injury is 154000.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017-25906 Filed 11-30-17; 8:45 am]

BILLING CODE 8025-01-P

SURFACE TRANSPORTATION BOARD

[Docket Nos. AB 290 (Sub-No. 394X); AB 1257X]

Norfolk Southern Railway Company—Abandonment Exemption—in Aurora, Portage County, Ohio; Cleveland Commercial Railroad Company, LLC—Discontinuance of Lease and Operation Authority—in Aurora, Portage County, Ohio

Norfolk Southern Railway Company (NSR) and Cleveland Commercial Railroad Company, LLC (CCR) (collectively, Applicants), have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to abandon, and for CCR to discontinue service over, approximately 5.5 miles of rail line between milepost RH 22.0 and milepost RH 27.5 in Aurora, Portage County, Ohio (the Line).¹ The Line traverses United States Postal Service Zip Codes 44202 and 44255.

Applicants have certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance (OFA) has been received, these exemptions will be effective on January 2, 2018, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 11, 2017. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 21, 2017, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by December 8, 2017. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by December 1, 2018, and there are no legal or regulatory

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemptions' effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,800. See *Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update*, EP 542 (Sub-No. 25), slip op. App. C at 20 (STB served July 28, 2017).

¹ In 2009, CCR was authorized to lease and operate the Line as part of a longer, 25.3-mile line, pursuant to an agreement with NSR. See *Cleveland Commercial R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35251 (STB served May 29, 2009).

barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at WWW.STB.GOV.

Decided: November 27, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2017-25932 Filed 11-30-17; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2017-95]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before December 11, 2017.

ADDRESSES: Send comments identified by docket number FAA-2017-1132 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Deana Stedman, AIR-673, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057-3356, email deana.stedman@faa.gov, phone (425) 227-2148; or Alphonso Pendergrass, ARM-200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email alphonso.pendergrass@faa.gov, phone (202) 267-4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on November 27, 2017.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA-2017-1132.

Petitioner: The Boeing Company.

Section of 14 CFR Affected:

§ 25.995(b).

Description of Relief Sought: The Boeing Company has petitioned for relief from the requirements of 14 CFR 25.995(b) regarding fuel valve tube loading in five locations of the Model 767-2C tanker airplane where the aerial refueling-unique fuel system installation design does not meet the prescriptive requirement.

[FR Doc. 2017-25877 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2017-0188]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ZENYATTA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: Comments should refer to docket number MARAD-2017-0188. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ZENYATTA is:

—Intended Commercial Use of Vessel:

“USCG Master run 3–6 hour sailing charters in San Diego”

—Geographic Region: “California”

The complete application is given in DOT docket MARAD-2017-0188 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017-25882 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2017-0187]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LA PAVO REAL; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: Comments should refer to docket number MARAD-2017-0187. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel LA PAVO REAL is: —*Intended Commercial Use of Vessel:* 6 passenger vessel to be used for charter fishing in the waters of the Gulf of Mexico on the Texas coast. —*Geographic Region:* "Texas"

The complete application is given in DOT docket MARAD-2017-0187 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully

considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017-25885 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2017-0185]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LA VIDA LOCA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: Comments should refer to docket number MARAD-2017-0185. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453,

Washington, DC 20590. Telephone 202–366–9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LA VIDA LOCA is:

- Intended Commercial Use of Vessel: “For use as uninspected passenger vessel (6-pack) for day charters, recreational sport fishing expeditions (fish caught will not be sold commercially), and multi-day charters in the Mid-Atlantic region”
- Geographic Region: “North Carolina, Virginia, District of Columbia, Maryland, Delaware, New Jersey, and Pennsylvania”

The complete application is given in DOT docket MARAD–2017–0185 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–25884 Filed 11–30–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0189]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DAKOTA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2017–0189. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DAKOTA is:

- Intended Commercial Use of Vessel:* “Charter Passengers”
- Geographic Region:* “Florida”

The complete application is given in DOT docket MARAD–2017–0189 at

<http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–25886 Filed 11–30–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0186]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA PIRATE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 2, 2018.

ADDRESSES: Comments should refer to docket number MARAD-2017-0186. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA PIRATE is:

—*Intended Commercial Use of Vessel:* “Public and private day charters and overnight charters”

—*Geographic Region:* “Washington State, Oregon, California”

The complete application is given in DOT docket MARAD-2017-0186 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

By Order of the Maritime Administrator.

Dated: November 28, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017-25883 Filed 11-30-17; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revisions; Submission for OMB Review; Regulation C; Fair Housing Home Loan Data System Regulation

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury. **ACTION:** Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the revision of its information collections titled “Regulation C” and “Fair Housing

Home Loan Data System Regulation.” The OCC also is giving notice that it has sent the collections to OMB for review.

DATES: Comments must be submitted on or before January 2, 2018.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0176; 1557-0159, 400 7th Street SW., Suite 3E-218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to prainfo@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-0159; 1557-0176, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to oira_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor.

“Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC proposes to revise the following collections:

Titles: Regulation C; Fair Housing Home Loan Data System Regulation.
OMB Control Nos.: 1557–0176; 1557–0159. *Type of Review:* Regular review.

Description: Regulation C,¹ which implements the Home Mortgage Disclosure Act² (HMDA) enacted in 1975, requires certain depository and non-depository institutions that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans, as well as loan applications that do not result in originations. HMDA generates loan data that can be used to: (1) Help determine whether financial institutions are serving the housing needs of their communities; (2) assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010³ (the Dodd-Frank Act) transferred HMDA and its rulemaking authority from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB), and transferred supervisory and enforcement authority for HMDA for depository institutions over \$10 billion in consolidated assets from the Board, Federal Deposit Insurance Corporation, OCC, and National Credit Union Administration to the CFPB.

The CFPB published a final rule on October 28, 2015 that expanded the data collected and reported under HMDA, as implemented by Regulation C, and published a final rule on September 13, 2017, with additional corrections and clarifications (final rules). The final rules also modified the types of lenders and loans covered under Regulation C. First, for data collected in 2017, and reported in 2018, the rule simply reduces the number of institutions covered under Regulation C because only depositories originating more than 25 closed end loans must report. Then, starting January 1, 2018, an institution will collect expanded data under HMDA if it either originates 25 or more closed-end mortgage loans or 500 or more open-end lines of credit secured by a dwelling in each of the two preceding years, in addition to meeting other criteria. These institutions will begin reporting the expanded HMDA data in 2019. Starting in 2020, an institution will collect data on open-end lines of credit if it originates more than 100

open-end lines of credit secured by a dwelling in each of the two preceding years (and report that open-end lines of credit data beginning in 2021). An institution also will collect and report covered loans and applications quarterly if it received a total of at least 60,000 covered loans and applications in the preceding calendar year. A covered institution must report a covered loan if it has met the loan origination volume threshold for that loan category (open-end or closed-end); an institution that is not required to report data may voluntarily do so subject to the limitations enumerated in 12 CFR 1002.5(b).

In addition, the types of loans covered under Regulation C will change under the final rules beginning in 2018. Covered institutions will be required to collect and report any mortgage loan secured by a dwelling, including open-end lines of credit, regardless of the loan's purpose. Dwelling-secured loans that are made principally for a commercial or business purpose, as well as agricultural-purpose loans and other specified loans will be excluded.

HMDA requires covered institutions to collect, record, report, and disclose information about their mortgage lending activity. Currently, Regulation C requires a covered institution to collect and report data about:

- Each application or loan, including the application date; the action taken and the date of that action; the loan amount; the loan type (for example, government guaranteed or not) and purpose (for example, home purchase); and, if the loan is sold, the type of purchaser;
- Each applicant or borrower, including ethnicity, race, sex, and income; and
- Each property, including location and occupancy status.

Beginning in 2018, the final rules will require collection of additional data, which covered institutions will report in 2019:

- Additional information about the applicant or borrower, such as age and credit score;
- Information about the loan pricing, such as the borrower's total cost to obtain a mortgage, temporary introductory rates, and borrower-paid origination charges;
- Information about loan features, such as the loan term, prepayment penalties, or non-amortizing features (such as interest only or balloon payments); and
- Additional information about property securing the loan, such as property value and property type.

In addition, existing requirements, including the requirements for collection and reporting of information regarding an applicant's or borrower's ethnicity, race and sex are being amended.

The Fair Housing Act⁴ prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, national origin, familial status, or handicap. The Equal Credit Opportunity Act⁵ (ECOA) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act⁶ (CCPA). The OCC is responsible for ensuring that national banks and federal savings associations comply with those laws. This information collection is needed to promote compliance and for the OCC to fulfill its statutory responsibilities.

The OCC uses the data collected pursuant to part 27 to determine whether an institution treated applicants consistently and made credit decisions commensurate with the applicants' qualifications and in compliance with the ECOA and the Fair Housing Act.

The information collection requirements in part 27 are as follows:

- 12 CFR 27.3(a) requires national banks that are required to collect data on home loans under Regulation C⁷ to present the data in accordance with the HMDA-LAR instructions. Section 27.3(a) also lists exceptions to the HMDA-LAR recordkeeping requirements. Federal savings associations are also required to report this information to the OCC pursuant to 12 CFR 128.6 and Regulation C.
- 12 CFR 27.3(b) lists the information national banks shall attempt to obtain from an applicant as part of a home loan application and sets forth the information that banks must disclose to an applicant.
- 12 CFR 27.3(c) sets forth additional information national banks must maintain in the loan file.
- 12 CFR 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage

⁴ 42 U.S.C. 3605.

⁵ 15 U.S.C. 1691 *et seq.*

⁶ 15 U.S.C. 1601 *et seq.*

⁷ This regulation has been transferred to the CFPB (12 CFR part 1003).

¹ 12 CFR part 1003.

² 12 U.S.C. 2801–2811.

³ Public Law 111–203, July 21, 2010.

Disclosure Act (12 U.S.C. 2801 *et seq.*) and Regulation C indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin. Section 27.4(a)(2) also requires a log if complaints filed with the Comptroller or letters in the Community Reinvestment Act file are found to be substantive in nature, indicating that the bank's home lending practices are, or may be, discriminatory.

- 12 CFR 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action taken on an application or after withdrawal of an application.

- 12 CFR 27.7 requires a national bank to submit the information required by §§ 27.3(a) and 27.4 to the OCC upon its request prior to a scheduled examination using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Form in Appendix IV to part 27. Section 27.7(c)(3) states that a bank with fewer than 75 home loan applications in the preceding year will not be required to submit such forms unless the home loan activity is concentrated in the few months preceding the request for data, indicating the likelihood of increased activity over the subsequent year, or there is cause to believe that a bank is not in compliance with the fair housing laws based on prior examinations and/or complaints, among other factors.

- § 27.7(d) provides that if there is cause to believe that a bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals.

OCC-regulated institutions have access to a CFPB-developed web-based data submission and edit-check system (the HMDA Platform) that may be used to process HMDA data. Some institutions, typically those with small volumes of reported loans or those that do not use a vendor or other software to prepare their HMDA data for submission, still need to use a software solution for integrating HMDA data from paper records or electronic systems. Therefore, the CFPB created a prototype "LAR Formatting Tool" which will allow financial institutions with small volumes of reported loans, or those that do not use a vendor or other software to prepare their HMDA data for submission.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Regulation C:

2017:

Estimated Number of Respondents: 702.

Estimated Annual Burden: 3,384,342 hours.

2018:

Estimated Number of Respondents: 702.

Estimated Annual Burden: 959,232 hours.

2019:

Estimated Number of Respondents: 702.

Estimated Annual Burden: 959,232 hours.

Fair Housing Home Loan Data System Regulation:

Estimated Number of Respondents: 956.

Estimated Annual Burden: 19,864 hours.

Frequency of Response: On occasion.

Comments: The OCC issued a notice for 60 days of comment regarding these collections on September 26, 2017, 82 FR 44873. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 28, 2017.

Karen Solomon,

Acting Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017-25914 Filed 11-30-17; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

United States Mint

Renewal of Currently Approved Information Collection: Comment Request for Customer Satisfaction and Opinion Surveys, and Focus Group Interviews

AGENCY: United States Mint, Treasury.

ACTION: Notice and request for comments; extension of comment period.

SUMMARY: This document extends the comment period for a notice and request for comments that was published in the **Federal Register** on Monday, November 6, 2017. The notice and request for comments relates to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: The comment period for the notice and request for comments published on Monday, November 6, 2017, (82 FR 51472, FR Doc. 2017-24087), is extended. Comments must be received on or before Friday, January 5, 2018.

ADDRESSES: Direct all written comments to Mary Ann Scharbrough, Records Officer, Office of the Director, United States Mint, 801 9th Street NW., Washington, DC 20220; (202) 384-5805 (this is not a toll-free number) mary.scharbrough@usmint.treas.gov.

FOR FURTHER INFORMATION CONTACT: Mary Ann Scharbrough, Records Officer, Office of the Director, United States Mint, 801 9th Street NW., Washington, DC 20220; (202) 384-5805 (this is not a toll-free number) mary.scharbrough@usmint.treas.gov.

SUPPLEMENTARY INFORMATION: A notice and request for comments that appeared in the **Federal Register** on Monday, November 6, 2017, (FR Doc. 2017-24087) announced that written comments are to be received by November 30, 2017. To provide the public with a sufficient opportunity to submit comments, the due date to receive written comments has been extended. Comments must be received on or before Friday, January 5, 2018.

Authority: Pursuant to 31 U.S.C. 5111, 5112, 5135, 5136, and 31 CFR part 92.

Dated: November 27, 2017.

David Motl,

Acting Deputy Director, United States Mint.

[FR Doc. 2017-26027 Filed 11-30-17; 8:45 am]

BILLING CODE 4810-37-P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0149]****Agency Information Collection Activity: Application for Conversion****AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from veterans to convert to a permanent plan of insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0149” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521; U.S.C. 1904 and 1942.

Title: Application for Conversion, VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Reinstatement of a previously approved collection.

Abstract: This form is used by Veterans to convert to a permanent plan of insurance. The information on the form is required by law, U.S.C. 1904 and 1942.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 4,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy, and Risk, Department of Veterans Affairs.

[FR Doc. 2017–25940 Filed 11–30–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0166]****Agency Information Collection Activity: Application for Ordinary Life****AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for replacement insurance.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0166” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Ordinary Life—VA Form 29–8700, 29–8700a, 29–8700b, 29–8700c, 29–8700d, 29–8700e, 29–8701, 29–8701a, 29–8701b, 29–8701c, 29–8701d, 29–8701e, 29–8485 and 29–8485a.

OMB Control Number: 2900–0166.

Type of Review: Reinstatement of Previously Approved Collection.

Abstract: These forms are used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 65 and 70. The information is required by law, 38 U.S.C. Section 1904. The expiration date is being added to the forms.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,284 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.
Estimated Number of Respondents:
 15,400.

By direction of the Secretary.

Cynthia Harvey-Pryor,

*Office of Quality, Privacy and Risk,
 Department of Veterans Affairs.*

[FR Doc. 2017-25942 Filed 11-30-17; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0179]

Agency Information Collection

Activity: Application for Change of Permanent Plan—Medical

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from veterans to apply to change his/her plan of insurance from a higher reserve to a lower reserve.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900-0179” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461-5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521; 38 CFR Sections 6.48 and 8.36.

Title: Application for Change of Permanent Plan—Medical VA Form 29-1549.

OMB Control Number: 2900-0179.

Type of Review: Reinstatement of a previously approved collection.

Abstract: These forms are used by veterans to apply to change his/her plan of insurance from a higher reserve to a lower reserve. The information on the form is required by law, 38 CFR Sections 6.48 and 8.36.

Affected Public: Individuals and households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden per

Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017-25941 Filed 11-30-17; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held on Thursday, January 4, 2018, via teleconference, from 1:00 p.m. (EST) until 3:00 p.m. (EST). The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary on the

rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, Committee members will participate in new members' orientation and review administrative guidelines. The primary agenda topics will be to discuss the purpose, vision and direction of VACOR.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to Sabrina Barry, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at Sabrina.Barry@va.gov. In the communication, writers must identify themselves and state the organization, association or person(s) they represent.

Individuals who wish to call into the meeting should RSVP to Sabrina Barry at (202) 461-9618, no later than close of business, December 28, 2017. The dial in number to attend the conference is 1-800-767-1750. At the prompt, enter access code 78160 then press #. During the day of the meeting, please call in at least 15 minutes prior to the start of the meeting; callers will not be given access after 1:00 p.m. Any member of the public seeking additional information should contact Sabrina Barry at the phone number or email address noted above.

Dated: November 28, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017-25891 Filed 11-30-17; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0005]

Agency Information Collection

Activity: Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0005” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1121, 1310, 5121.

Title: Application For Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable).

OMB Control Number: 2900–0005.

Type of Review: Extension without change of a currently approved collection.

Abstract: 38 U.S.C. 1121 and 1310 provide for payment of Dependency and Indemnity Compensation (DIC) or death

compensation to parents of a Veteran whose death is service-connected. Parents must also meet income limitations to be eligible for benefits. 38 U.S.C. 5121 provides for payment of accrued benefits.

VBA uses 21P–535 to collect the information necessary to determine a surviving parent’s eligibility to Parents’ DIC benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden per Respondent: 72 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 3,600.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–25938 Filed 11–30–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection Activity: Designation of Certifying Official

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Cynthia Harvey-Pryor, Veterans Benefits Administration (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to cynthia.harvey-pryor@va.gov. Please

refer to “OMB Control No. 2900–0262” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 96–342.

Title: Designation of Certifying Official (VA Form 22–8794).

OMB Control Number: 2900–0262.

Type of Review: Reinstatement without change of a previously approved collection.

Abstract: VA Form 22–8794 provides VA with the names and signatures of those persons authorized to certify and submit to VA any new hours or changes in the enrollment of their VA students.

Affected Public: Individuals and households.

Estimated Annual Burden: 448 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 2,688.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–25943 Filed 11–30–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0024]****Agency Information Collection Activity: Insurance Deduction Authorization**

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from veterans to authorize the Department of Veterans Affairs (VA) to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance contract.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0024” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521 and 38 CFR 8.8.

Title: Insurance Deduction Authorization, VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Reinstatement of a previously approved collection.

Abstract: These forms are used by veterans to authorize the Department of Veterans Affairs (VA) to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance contract. The information requested is authorized by law, 38 CFR 8.8.

Affected Public: Individuals and households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3732.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–25939 Filed 11–30–17; 8:45 am]

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Part II

Department of Commerce

Economic Development Administration

13 CFR Parts 300, 301, 302, et al.

Revolving Loan Fund Program Changes and General Updates to PWEDA Regulations; Final Rule

DEPARTMENT OF COMMERCE**Economic Development Administration**

13 CFR Parts 300, 301, 302, 303, 304, 305, 307, 309, and 314

[Docket No.: 160519444–7133–01]

RIN 0610–AA69

**Revolving Loan Fund Program
Changes and General Updates to
PWEDA Regulations**

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (“EDA”), U.S. Department of Commerce (“DOC”), is issuing this final rule amending the agency’s regulations implementing the Public Works and Economic Development Act of 1965, as amended (“PWEDA”). The changes incorporate current best practices and strengthen EDA’s efforts to evaluate, monitor, and improve performance within the agency’s Revolving Loan Fund (“RLF”) program by establishing the Risk Analysis System, a risk-based management framework, to evaluate and manage the RLF program. To make RLF awards more efficient for Recipients to administer and EDA to monitor, EDA is also reorganizing the RLF regulations and making changes to improve readability and clarify those requirements that apply to the distinct phases of an RLF award. In addition, EDA is updating other parts of its regulations, including revising definitions, replacing references to superseded regulations to reflect the promulgation of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”), streamlining the provisions that outline EDA’s application process, and clarifying EDA’s property management regulations.

DATES: This rule is effective on January 2, 2018.

ADDRESSES: EDA posted all public comments received on the *Federal Rulemaking Portal*, www.regulations.gov, without change. For convenience, after the final rule becomes effective, EDA will update the full text of EDA’s regulations, as amended, and post it on EDA’s Web site at <https://www.eda.gov/about/regulations.htm>.

FOR FURTHER INFORMATION CONTACT: Ryan Servais, Attorney Advisor, Office

of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230; telephone: (202) 482–5325.

SUPPLEMENTARY INFORMATION: The Department notes that the President’s Fiscal Year 2018 Budget calls for the elimination of EDA. The Department considers this final rule important to implement because the Department would need to continue to administer and monitor RLF grants in perpetuity under current statutory authorities. The regulatory changes in this final rule will enable the Department to more efficiently manage the residual RLF portfolio going forward. Likewise, additional changes made by this final rule to EDA’s general PWEDA implementing regulations would enable the Department to more effectively oversee the non-RLF residual grant portfolio to ensure that grantees continue to use projects for the purpose originally funded and to eventually execute releases of the federal interest in the property at the expiration of the useful life, often 20 years after the date of the grant award.

Background

EDA leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through strategic investments that foster job creation and attract private investment, EDA supports development in economically distressed areas of the United States.

Authorized under section 209 of the Public Works and Economic Development Act of 1965 (“PWEDA”) (42 U.S.C. 3149) the RLF program serves as an important pillar of EDA’s investment programs by helping communities and regions transform their economies and propel them towards economic prosperity through innovation, entrepreneurship, and public-private partnerships. Through the RLF program, EDA provides grants to eligible Recipients, which include State and local governments, political subdivisions, and non-profit organizations, to operate a lending program that makes loans to businesses that cannot obtain traditional bank financing and to governmental entities for public infrastructure. These loans enable small businesses to expand and lead to new employment opportunities that pay competitive wages and benefits. They also help retain jobs that might otherwise be lost, create wealth, and

support minority and women-owned businesses.

Each RLF Recipient contributes matching funds in accordance with EDA’s statutory requirements to capitalize an RLF. As loans made from this original pool of EDA and Recipient funds are repaid, the RLF is replenished and new loans are extended to qualified businesses. Loans can also be provided to governmental entities for eligible public infrastructure. Each RLF Recipient must develop and maintain an RLF Plan to demonstrate how the fund fits specific economic development goals and how it will adequately administer the RLF throughout its lifecycle. The RLF Recipient’s obligation to manage the RLF continues in perpetuity because, absent statutory authority providing otherwise, under current law the Federal Interest in the RLF never expires.

Since February 1, 2011, EDA has taken a critical and comprehensive look-back at its regulations to reduce burdens by removing outmoded provisions and streamlining and clarifying requirements. On December 19, 2014, EDA published a final rule that became effective on January 20, 2015 (79 FR 76108) (“January 2015 Final Rule”) revising the agency’s regulations and reflecting the agency’s contemporaneous practices and policies in administering its economic development assistance programs. Through the January 2015 Final Rule, EDA reorganized part 307 to help clarify award requirements and incorporate all RLF program requirements under subpart B to part 307.

On October 3, 2016, EDA published a notice of proposed rulemaking (“NPRM”) in the **Federal Register** (81 FR 68186) requesting public comments on additional proposed changes to its regulations with a particular focus on revisions to those provisions related to RLFs. The public comment period closed on December 2, 2016, and EDA received 103 submissions. This final rule responds to each of those comments, makes seven changes to the proposed regulatory language in response to the comments, and sets forth the finalized set of regulations. Additionally, because this final rule lessens the costs to RLF Recipients to comply with EDA RLF regulations as described in the Classification section, this final rule is a “deregulatory action” pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771.

Public Comments and Summary of Differences Between the NPRM and the Final Rule

In response to the NPRM, EDA received a total of 103 submissions, inclusive of 73 comments received during a November 15, 2016 informational webinar about the NPRM. The 103 submissions addressed a total of 29 discrete issues. After careful consideration of the comments received, EDA has made seven changes to the proposed regulations contained in the NPRM. EDA's responses to the comments and the specific changes made to the final rule are summarized below.

Part One: Issues That Resulted in Changes to the NPRM Regulatory Language

Issue One: Renewal of Commitments Under a Comprehensive Economic Development Strategy (CEDS)

In the NPRM, EDA added language to § 303.6(b)(3)(ii) that a Planning Organization, in connection with the required submission of a revised CEDS at least every five years, “must obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District.” One non-profit commenter suggested that the last sentence should instead read, “The Planning Organization shall use its best efforts to obtain renewed commitments from participating counties or other areas within the District. . . .” The commenter also wanted EDA to add another sentence at the end “that states that the inability to secure renewed commitments shall not be a disqualifying event for preparation or approval of the CEDS.”

The intent of the new language was to emphasize that for an Economic Development District (EDD) to be successful, participating counties or other areas should be active contributors to the development and implementation of the CEDS. Unfortunately, involvement by these counties and areas in the CEDS process and awareness of its associated implementation efforts may wane over time. EDA views these possible scenarios as both detrimental to regional economic development and to the value and importance of the CEDS itself. However, because the intent of this new language is to make sure all jurisdictions are aware of the CEDS and its value, not to necessarily disqualify a CEDS, EDA is modifying the proposed § 303.6(b)(3)(ii) language to incorporate the requester's suggestions. The final rule now provides that in connection

with the submission of a new or revised CEDS, the Planning Organization shall use its best efforts to obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District. Provided the Planning Organization can document a good faith effort to obtain renewed commitments, the inability to secure renewed commitments shall not disqualify a CEDS update.

Issue Two: Definition of Capital Base

Two comments request that we add language to the proposed definition of “RLF Capital Base” to clarify that the RLF Capital Base excludes eligible administrative expenses. While the second sentence of the definition addresses administrative costs associated with RLF operations, it does so in the context of the two forms in which the RLF Capital Base is maintained (RLF Cash Available for Lending and outstanding loan principal).

EDA agrees that additional language in the second sentence of this definition would help clarify the fact that RLF Income used for eligible and reasonable administrative expenses is excluded from the definition although it is further explained in § 307.12(a). Accordingly, EDA has revised the definition in § 307.8 to state that RLF Capital Base means the total value of RLF Grant assets administered by the RLF Recipient. It is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable) the RLF, plus Local Share, plus RLF Income less any eligible and reasonable administrative expenses, plus Voluntarily Contributed Capital, less any loan losses and disallowances. Except as used to pay for eligible and reasonable administrative costs associated with the RLF's operations, the RLF Capital Base is maintained in two forms at all times: As RLF Cash Available for Lending and as outstanding loan principal.

Issue Three: Excluding Committed/ Approved Loans Not Yet Funded From Allowable Cash Percentage

One non-profit commenter requested that EDA add language to the new definition of “RLF Cash Available for Lending” in § 307.8 to ensure that loans that have been committed or approved but not yet funded are not counted as RLF Cash Available for Lending when calculating the Allowable Cash Percentage for each regional portfolio.

EDA agrees with this comment and is revising the definition of “RLF Cash Available for Lending” in the final rule to exclude loans that have been

committed or approved but not yet funded.

Issue Four: Auditor Certification of Accounting System

EDA received one comment from a professional organization regarding the ongoing requirement for auditor certification of a Recipient's accounting system. In the NPRM, we proposed to move from § 307.15(b) to § 307.11(a) (“*Pre-disbursement requirements*”) the requirement that a qualified independent accountant certify as to the adequacy of the RLF Recipient's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations. EDA proposed no substantive changes to this requirement other than to update references to 2 CFR part 200.

The comment EDA received regarding this requirement expressed concern that this requirement is unclear regarding the level of effort that would be needed by an accountant to issue a certification that an accounting system is “adequate.” The comment asserted that without clearer guidance as to the meaning of this standard, accountants would be unable to comply with their obligation to “obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.”

EDA is persuaded that the language, as proposed, is not sufficiently clear to enable accountants to meet their mandate. However, EDA also believes that it is important to ensure that RLF Recipients are aware of their Federal financial management requirements and responsibilities. As such, EDA is revising § 307.11(a)(i) to require self-certification from the Recipient that the Recipient's accounting system meets the established criteria. This change will serve to increase the awareness of the need to maintain proper accounting systems to account for Federal funds while addressing the concerns raised regarding accountants' ability to meet their mandate under the proposed language. In addition, the adoption of the Risk Analysis System will increase EDA's ability to monitor Recipients' financial controls throughout the life of the RLF grant, providing an additional tool for ensuring compliance with these requirements.

Issue Five: Use of RLF Income During the Disbursement Phase

EDA received one comment expressing confusion regarding the change in the language related to the use of RLF Income earned during the

Disbursement Phase. The commenter stated its understanding that any RLF Income not used for administrative costs becomes part of the RLF Capital Base and must be loaned out to borrowers as RLF loans.

EDA believes this comment may be conflating the Disbursement and Revolving Phases. Immediately following the initial award of an RLF Grant, RLF Recipients may request drawdowns from EDA and submit appropriate evidence documenting the basis for those requests. This is known as the Disbursement Phase and is described in the Definitions section of the regulations (§ 307.8) and in § 307.11 (“*Pre-disbursement requirements and disbursement of funds to Revolving Loan Funds*”).

The previous regulations specified that RLF Income held to reimburse administrative costs did not need to be disbursed in order to draw additional Grant funds, but they did not address how to handle RLF Income not used for administrative costs. As such, the NPRM proposed revising § 307.11(c) to clarify that RLF Income earned during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs but need not be disbursed to support new loans, unless otherwise specified in the terms and conditions of the RLF Grant. EDA felt that this revision was clear that it applied to the Disbursement Phase and not to the Revolving Phase, the phase in which most RLF Recipients are currently operating and during which they are no longer requesting drawdowns for a specific RLF Grant.

Nevertheless, EDA feels that it can provide additional clarity to this section by also addressing how repaid loan principal should be handled during the Disbursement Phase and stressing that, like RLF Income earned during this Phase, it need not be used for new loans unless otherwise specified. As a result, EDA added the words, “and principal repaid” to the fourth sentence of § 307.11(c).

Issue Six: Applying Allowable Cash Percentage to Recipients Based on Their Fiscal Year

Eleven commenters requested that the Allowable Cash Percentage be applied to RLF Recipients on a cycle that matches their Fiscal Year instead of the schedule proposed in the NPRM of notifying Recipients by January 1 of each year of the Allowable Cash Percentage to be applied during the ensuing calendar year.

EDA is sympathetic to this concern in light of the differences between

Recipients with varying Fiscal Years. In order to ensure that all Recipients have sufficient amount of time to comply with the Allowable Cash Percentage for their individual regions, EDA has changed proposed § 307.17(b) to now state that EDA shall notify each RLF Recipient by January 1 of each year of the Allowable Cash Percentage to be applied to lending during the Recipient’s ensuing fiscal year, rather than calendar year, beginning on or after January 1.

Issue Seven: Loan Quality Review

EDA received one comment regarding a regulatory provision for which no substantive change was recommended in the NPRM. Section 307.17(d), which was re-lettered from § 307.17(c), allows EDA to require an independent third party to conduct a compliance and loan quality review for an RLF Grant every three years. If required, this review is considered an administrative cost in accordance with the requirements set forth in § 307.12. The commenter suggests that this requirement creates redundancy, adds to the demands of what are already limited funds, and should be unnecessary with implementation of the Risk Analysis System.

EDA agreed with this comment and believes that this type of review can be accomplished through other mechanisms that are currently available, such as through a desk audit, site visit, or the regular audit process. Further, this provision has rarely been invoked in recent years, and so EDA identified this dormant section of the RLF regulations as appropriate for removal in an effort to further streamline EDA’s regulations. As a result, EDA has removed this paragraph in its entirety.

Part Two: Issues That Did Not Result in Changes to the Final Rule

Aside from the issues described above, EDA received comments on 22 issues that did not result in changes to the proposed regulations. The comments received on these issues are presented below along with our responses.

Issue Eight: Definition of Subrecipient

One non-profit commenter requested that EDA address in the § 300.3 definition of “Subrecipient” whether the Investment Assistance requirements that apply to a Recipient flow down to a Subrecipient. The commenter also argued that the “Recipient and Subrecipient should have the flexibility to define the obligations of each other in their own contract/agreement documentation.”

The Uniform Guidance defines the Recipient-Subrecipient relationship in 2 CFR 200.330–200.332. Generally, a Subrecipient is bound by the same terms and conditions that bind the Recipient plus any additional requirements the Recipient imposes. See 2 CFR 200.331. Because the issue raised by the commenter is already addressed in the Uniform Guidance, EDA will not make any changes to the definition of “Subrecipient,” as proposed.

Issue Nine: Clarification of Acceptable Alternatives to CEDS

EDA proposed language modifying § 303.7(c)(1) to clarify that EDA would accept a non-EDA funded CEDS that does not meet the four foundational elements of a CEDS in particular circumstances, such as a natural disaster or sudden and severe economic dislocation. A non-profit commenter requests further clarification in the final rule on what specific types of plans would be accepted in these circumstances.

While EDA understands the desire for more specificity, EDA has determined that the flexibility provided by the proposed language should be maintained in the final version of the regulations. In times of natural or man-made disasters or other sudden or severe events, EDA needs to be responsive to economic recovery needs. EDA’s experience demonstrates that time is of the essence in these circumstances and EDA needs the flexibility to move forward quickly with whatever documentation is available at the time. In such situations EDA would also typically notify an applicant of any areas in their plan that might need to be included to meet the CEDS equivalent requirement and allow the entity to subsequently make changes to their planning document (if applicable).

Issue Ten: Definitions of Real Property and Project Property

EDA proposed a simplified definition of Real Property and new definition of Project Property in the NPRM. One non-profit commenter felt that both definitions in § 314.1 are over broad and could lead to takings in violation of the Fifth Amendment to the U.S. Constitution. The commenter specifically proposed that the Real Property definition be limited to those Properties directly, as opposed to consequentially, benefitted by EDA Investment Assistance so non-participating Property is not encumbered. The commenter went on to argue that, “[a]lthough the definition may work for certain off-site improvements (wastewater plant), and

the recording of the reversionary interest may be prudent for the improvement site and any direct beneficiaries that were tied to the project and included in the grant, it is not appropriate to burden all properties via a blanket assertion of benefit.” The commenter similarly believed that the new definition of Project Property vests too much discretion in EDA to determine whether property that is acquired or improved with Investment Assistance is deemed integral to the Project and thus encumbered. The commenter urged EDA to adopt clear determining criteria and require landowner consent prior to EDA making such a determination.

EDA disagrees with the commenter’s position. Application of these definitions would not result in takings under the Fifth Amendment because EDA is not physically seizing or devaluing private property without just compensation. In fact, quite the opposite is happening: EDA is benefitting the Property (likely resulting in an increase in value). However, because the funds involved are Federal, EDA must protect the Investment by way of an encumbrance that reflects the value of EDA’s Investment. The definition of “Real Property” in § 314.1 supports this proposition because EDA only encumbers Property “. . . where the infrastructure contributes to the value of such land as a specific purpose of the Project”, not Properties that might be “consequentially” benefitted by Investment Assistance. Further, the proposed definition of “Real Property” is not substantially different than EDA’s prior definition, just simpler, and EDA has not had taking issues in the past. Land that is integral to the specific purpose of the Project, and thus would benefit from the Investment, is meticulously defined in the application and contemplated by the Recipient at the time of award. In no event would this result in a taking given these circumstances.

Additionally, EDA cannot narrow the definition of Real Property in the manner proposed by the commenter for two reasons. First, EDA has to ensure that the definition appropriately captures all types of Property (*e.g.*, fixtures, appurtenances) that EDA may need to encumber under its numerous PWEDA programs if that Property has benefitted as a result EDA’s Investment. Second, EDA at times needs to impose restrictions on benefitted Property to avoid situations where an applicant attempts to pass-through EDA Investment Assistance funds to an ineligible entity. In fact, EDA’s definition actually creates more

flexibility and more opportunities for Recipients by allowing EDA to invest in Projects that would otherwise be barred by such pass-through considerations.

In a similar vein, EDA has determined that the amount of discretion provided by the definition of Project Property is appropriate given the need to appropriately define the scope of EDA’s Investment and to then protect that Investment. Identifying those components that are required for the successful completion and operation of a Project and/or serve as the economic justification of a Project, is a necessary step to ensuring the success of a Project over its entire useful life. The applicant is protected from any takings because these elements are, again, identified in the application and contemplated by the Recipient at the time of award.

In light of the above considerations, EDA is not making any changes to the definitions of Real Property or Project Property in the final rule.

Issue Eleven: Constraints on RLF Lending

One commenter states that our current RLF regulations create what is in effect a niche lending program that constrains loan applicant eligibility. The commenter cites leveraging, job creation, and portfolio allocation requirements as examples of these constraints. The comment expresses the opinion that it would be good to revise these criteria to ensure that more money reaches borrowers.

EDA disagrees that the RLF regulations unduly constrain loan applicant eligibility. EDA affords RLF Recipients a great deal of flexibility in the design of their RLF Plans. Within the RLF Plan, Recipients dictate the appropriate job creation/retention criteria, portfolio allocation, and other portfolio standards and loan selection criteria. The leveraging requirement of \$2 of additional investment for each dollar of EDA RLF funding is dictated by EDA regulation and applies to the Recipient’s RLF portfolio as a whole. Nevertheless, through this final rule, EDA is actually broadening the types of funds that may be used to meet this requirement by enabling Recipients to use funds from State and local lending programs, and the non-guaranteed portions and 90 percent of the guaranteed portions of Federal loan programs. *See* § 307.15(c). In addition, if a Recipient would like to change its RLF Plan in an effort to reach more potential borrowers, it may submit an updated Plan for review and approval by EDA. As such, EDA is making no additional changes to the criteria raised by this commenter.

Issue Twelve: Effective Date of Regulatory Changes

EDA received eight comments asking when these regulatory changes would become effective, particularly with regard to the RLF program. Some of the commenters queried whether there should or would be a delay as a result of the transition to a new Presidential Administration. Others asked if the changes would be implemented in phases, whether they would become effective in Fiscal Year 2017, and when the first round of risk analysis ratings would be assigned.

As indicated above, these regulatory changes are the result of a long-term effort by EDA to update and streamline all of our regulations and to adopt industry best practices in an effort to strengthen and improve the RLF program. It is our view that these efforts are critical to the continued vitality of EDA’s programs and, as such, any delay would jeopardize our ability to provide effective oversight over programs that have historically helped to create jobs and spur economic growth, especially in distressed areas.

As is the normal time frame for most regulations, these regulations will become effective 30 days after publication. EDA has issued a separate **Federal Register** notice concurrently with this final rule seeking comment on the performance measures that EDA is proposing to use for the initial round of scoring under the Risk Analysis System. We have published the final regulations at the same time as the notice on the Risk Analysis System to ensure timely stakeholder engagement and feedback as we prepare to implement this new approach.

As is described in that notice and in the NPRM, the Risk Analysis System is modeled on the Uniform Financial Institutions Rating System, commonly known as the capital adequacy, assets, management capability, earnings, liquidity, and sensitivity (“CAMELS”) rating system, which has been used since 1979 to assess financial institutions on a uniform basis and to identify those in need of additional attention. EDA’s proposed measures reflect the categories underlying the CAMELS approach for assessing the health of financial institutions but are based on data currently submitted by Recipients in their semi-annual reporting. Through the notice, EDA is soliciting feedback from the public on those measures. EDA will consider that feedback as it finalizes the measures to be used for scoring and determines the timeline for implementing the Risk Analysis approach. EDA will then

conduct active public outreach to inform all of our stakeholders on the measures, the process for assessing Recipients, and when the first round of scores will be assigned and communicated to Recipients.

Issue Thirteen: Releasing the Federal Interest in an RLF

Fourteen commenters requested that EDA release the Federal interest in an RLF after a specified period of time. Many of our Recipients express concern with the cost and time required to continue to comply with EDA regulations, especially auditing and reporting requirements, even after they have established a lengthy record of demonstrable competence and success in meeting the goals of the RLF program. The commenters note that continued compliance after such a long period of time can be a particularly heavy burden on small non-profit organizations.

EDA understands the challenges presented by the perpetual nature of EDA's interest in RLF assets. EDA also recognizes that many of our Recipients have been effective stewards of their RLF assets and that the RLF program has grown in value and in its ability to impact communities in distress due in large part to the efforts of our Recipients. However, while EDA has statutory authority to release its interest in Real Property and tangible Personal Property acquired with EDA grant funds after a certain period of time has elapsed, there is no such authority for EDA to release its interest in RLF assets. As such, EDA continues to pursue legislative solutions that would address this concern. In the interim, through this final rule, EDA is significantly revising its regulations to make compliance easier for our RLF Recipients, especially those demonstrating effective performance as determined through the Risk Analysis System.

Issue Fourteen: General Cost of Compliance

EDA received 14 comments remarking that the costs of compliance with RLF program requirements are generally high, especially for audits and attorney reviews of loan documentation. Many of these commenters also indicated that some of the regulatory changes proposed would cause these costs to rise.

Audits are required by the Uniform Guidance for Federal grant recipients and, as a result, are generally fixed costs. In addition, as explained in more detail in the below discussion of this issue, EDA believes that legal review of Recipients' loan documents is an

essential element to ensuring appropriate oversight of Recipients' use of RLF award funds. Nevertheless, as noted previously, the regulatory revisions in this final rule are designed to streamline requirements and minimize costs throughout the transition of the program to a risk-based approach to program oversight. While a few additional requirements are being added to support this new approach, other requirements are being relaxed. Examples include the allowance of alternatives to a bank turn-down letter, more options for loan leveraging, and the end to automatic sequestration. In addition, nothing in these regulatory revisions would affect the Recipients' ability to use RLF Income for administrative expenses. In fact, EDA has sought to make this process easier for Recipients by no longer requiring the Recipient to complete an RLF Income and Expense Statement (former ED-209I) and by extending the period during which RLF Income may be withdrawn from the RLF Capital Base for a purpose other than lending.

Issue Fifteen: Risk Analysis System

Twenty-five comments were received on various aspects of the Risk Analysis System.

One commenter stated that the Risk Analysis System runs counter to the purpose and intent of the RLF program. EDA disagrees. EDA designed the Risk Analysis System to help measure, address, and monitor risk. This system reflects current best practices and will strengthen EDA's efforts to evaluate, monitor, and improve RLF performance. In this way, it will help EDA and its RLF Recipients to fulfill the goals of the RLF program by ensuring that RLF grants continue to bring economic prosperity to communities in need.

Another comment on the Risk Analysis System expressed concern about the system possibly creating an administrative burden on Recipients and EDA regional staff through additional monitoring, financial controls, and reporting requirements. EDA anticipates that the changes made by this final rule will help ease the administrative burden on both Recipients and EDA program staff. For example, the final rule would change the reporting frequency to either annual or semi-annual, depending on each Recipient's score in the Risk Analysis System. Further, EDA is changing the reporting period to follow each Recipient's fiscal year end.

One comment stated that it is premature to adopt a Risk Analysis System until factors and rating criteria are identified. The commenter also took

the position that the provisions establishing the system should be removed from the regulations unless or until the measures are identified. EDA also received a comment that suggested that EDA use Aeris ratings as a substitute for the Risk Analysis System scores for those Recipients that are already Aeris rated. Aeris is an independent organization that provides third party assessments of community development financial institution loan funds by using a proprietary methodology based on CAMELS factors. While Recipients are not prohibited from using Aeris ratings for their own operational purposes, at this time EDA will not accept or use Aeris ratings as a substitute for its own Risk Analysis System assessments because, at this initial stage, EDA is seeking to ease the transition to this new approach for our Recipients by basing our measures on the data that is already provided through RLF reporting. Nevertheless, in a separate notice that EDA has issued concurrently with this final rule, EDA is soliciting feedback from the public on EDA's proposed Risk Analysis System performance measures and will consider that feedback, including any feedback EDA receives regarding parallels between the two approaches, as EDA launches our risk-based scoring.

Along those same lines, EDA received a comment that asked EDA to develop the framework for the Risk Analysis System in consultation with RLF Recipients. In response, EDA encourages our Recipients to review the **Federal Register** notice describing our proposed performance measures for this system and provide detailed input. EDA will consider all feedback very carefully and will notify the public of the final set of performance measures that will be used at the onset of the Risk Analysis System, as well as conduct outreach to share those performance measures and what to expect with the use of this system as EDA launches it.

With regards to the specific measures that will be used, EDA received one comment regarding percentage of RLF Income used for administrative expenses. In § 307.12(a)(4), EDA is revising the regulations on the use of RLF Income by clarifying that Recipients may not use funds in excess of RLF Income for administrative expenses unless directed to do so by EDA. EDA is also revising that provision by clarifying that the percentage of RLF Income used for administrative expenses will be one of the measures used in the Risk Analysis System to evaluate Recipients. The Risk Analysis System will thus incentivize Recipients to prudently manage administrative

expenses and maximize their RLF Capital Base reserves for lending. However, the commenter stated that using this as a measure would automatically penalize smaller Recipients (which have higher fixed costs) or Recipients that offer lower interest rates to borrowers. While EDA recognizes that some Recipients may face higher costs or generate less income than other Recipients, EDA believes that the amount of RLF Income used for administrative expenses is an important indicator of the condition of an RLF. Indeed, Recipients that spend a high amount of RLF Income on administrative expenses are more likely to face challenges in maintaining and growing their RLF Capital Base. Nevertheless, the amount of RLF Income used for administrative expenses would be one of fifteen measures used to assess Recipient performance, enabling Recipients with a potential disadvantage in this area to balance their overall scores through higher scores in other measures.

Another comment asserted that EDA should be able to determine poorly performing RLF Recipients based on the current reporting system. EDA does not believe that maintaining the status quo would represent a best practice in the loan-making community. As stated in the NPRM, since the RLF program's inception, EDA has funded over 800 RLFs nationwide, investing \$500 million in RLFs that have a combined capital base of more than \$813 million. A move to a risk-based assessment system is critical to properly managing a program of this size with limited resources and thereby ensuring the program's continued success. Moreover, the Risk Analysis System is not designed to determine which Recipients are performing poorly but rather to improve performance for the program as a whole.

EDA received a comment regarding § 307.16(b), which as proposed states, "An RLF Recipient generally will be allowed a reasonable period of time to achieve compliance with risk factors as defined by EDA." The commenter requests EDA define "reasonable period of time" in this context. EDA has chosen not to define this phrase because it will likely vary from Recipient to Recipient, depending on the identified risk factors. EDA's regional staff will work with each Recipient to determine what is "reasonable" based on that entity's individual circumstances.

Another comment sought clarification as to whether Recipients that currently have sequestered funds will be relieved of that obligation upon implementation of the final rule. The answer is yes.

These Recipients with sequestered funds will be provided guidance asking them to return their sequestered funds to their RLF Capital Base and notifying them that they will be managed from that point forward using the Allowable Cash Percentage and the Risk Analysis System.

Issue Sixteen: Providing Additional Funding to "A" Rated Recipients

One commenter asks if EDA would consider providing additional grant funding to Recipients that have been rated "A" through the Risk Analysis System and that have loaned out all of their funds. While the regulations do not provide for additional funding to be made automatically available to "A" rated RLFs, EDA takes a wide variety of factors into consideration when considering Investment decisions, including historical performance by specific applicants.

Issue Seventeen: Obtaining Input From the Public Regarding the Regulatory Changes

EDA received four comments that asked us to form a committee of EDA representatives, economic development practitioners, and RLF Recipients to vet the proposed changes to the regulations before final adoption. Similarly, EDA received ten comments from individuals and organizations requesting that EDA consult with RLF practitioners in developing the Risk Analysis System and prior to finalizing these regulations, requesting outreach regarding the revised reporting form, stating that the final regulations appear different from what had previously been discussed, indicating apparent similarities between the RLF program and the Small Business Administration's Microloan program, and asking whether EDA's RLF staff would remain with EDA after the change of Administration.

EDA recognizes the tremendous value of soliciting the opinions of stakeholders when undertaking changes to our regulations and programs. EDA prides ourselves on our close working relationship with communities and organizations across the nation. Two years ago, EDA developed an internal RLF Working Group with representatives from each of our Regional offices, legal counsel, and our national performance programs division. EDA also reached out to other Federal agencies for insight and best practices. While EDA appreciates the interest in forming a committee to provide input, EDA feels that the publication of the NPRM and the November 15, 2016 webinar conducted to discuss the proposed regulatory

changes provided us with even broader access to the views of stakeholders than would have been the case with a committee limited to select members of the public. In addition, as EDA has noted previously, EDA intends to continue our outreach to and discussions with our Recipients and other stakeholders as EDA implements these changes, including those regarding our reporting form and the Risk Analysis System measures, and pursue other tools for improving the RLF program. As indicated during our informational webinar, our commitment to our Recipients and the nation will not change.

Issue Eighteen: Allowable Cash Percentage

EDA received 15 comments on the newly introduced Allowable Cash Percentage definition, including two that were addressed above (Issues Two and Three), and one that was supportive of this new approach as a replacement for the capital utilization standard.

Another comment submitted from an entity in American Samoa expressed its view that regional calculations are not the fairest approach to calculating the Allowable Cash Percentage. EDA acknowledges this concern and intends to review the relevant data and refine its measures as appropriate. In the meantime, failure to comply with the Allowable Cash Percentage will be one factor among many that will be used to assess risk and performance within a Recipient's RLF portfolio, so it alone is not determinative of a final risk score.

Another commenter suggested that EDA set a threshold or boundary on the floating Allowable Cash Percentage. EDA responds by noting that it expressly created the Allowable Cash Percentage to avoid rigid thresholds and the inflexibility that existed with the Capital Utilization standard. Instead, with the Allowable Cash Percentage, EDA establishes a floating rate based on year-by-year fluctuations in economic conditions across regions in order to introduce flexibility that did not exist before and to address the challenges associated with the Capital Utilization standard and automatic sequestration. Nevertheless, the revised §§ 307.20 and 307.21 establish a threshold by listing as a form of noncompliance the holding of RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or other extenuating circumstances.

One comment expressed concern about the "subjectivity and vagueness of the proposed change with the Allowable

Cash Percentage,” adding that this “could be to the advantage of the RLF, especially if it is close to the requirement (but not quite there) on its utilization rate, depending on EDA’s response.” Another commenter stated that this change could put newer RLF Recipients at an immediate disadvantage, necessitating some mechanism to even the playing field for those Recipients. EDA understands that newer RLF Recipients may not have the same level of experience as Recipients that have been operating RLF programs for longer periods of time. However, the Allowable Cash Percentage is based on an objective calculation: The average percent of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each regional office’s portfolio of RLF Grants over the previous year. In addition, as EDA noted in the NPRM, EDA recognizes that different regions face very different economic conditions and variations in access to capital and that a one size fits-all capital utilization standard can be difficult for RLF Recipients to meet and for EDA to implement. To help resolve this, EDA is now reversing the standard on which RLF Recipients will be assessed from the amount of capital that is loaned or committed to the amount of cash Recipients have on hand available for lending—the Allowable Cash Percentage. Moreover, Recipients will be assessed against a range of measures, of which compliance with the Allowable Cash Percentage is just one. In the end, effective management and compliance with all RLF regulations will help prevent any single Recipient from being disadvantaged by the applicable Allowable Cash Percentage.

Another comment on this issue suggested that EDA establish exceptions to the Allowable Cash Percentage and allow for situations where cash becomes available for early loan pay-offs or a “Force major event occur[s] in a RLF area.” EDA believes that these types of exceptions can be handled through individual compliance actions and do not necessitate explicit carve-outs. Also, the Allowable Cash Percentage is designed to accommodate fluctuations in economic conditions across regions as well as in cash flows within Recipients.

Other comments addressed the removal of those provisions requiring automatic sequestration as part of the transition from the capital utilization standard to the Allowable Cash Percentage. One commenter generally expressed its support of this change. Another asserted that this change is unnecessary because the language

regarding sequestration was permissive rather than mandatory because it provides that if a Recipient failed to satisfy the capital utilization standard for two consecutive Reporting Periods, EDA “may” require the Recipient to deposit excess funds in an interest-bearing account. While this provision used the word “may” rather than “must” or “shall,” in practice and under these circumstances, EDA regularly required Recipients to sequester excess cash. EDA removed this requirement in order to stress that, in accordance with the shift to the use of a Risk Analysis System, sequestration will be considered as one of a range of possible tools for ensuring compliance with the terms of the RLF Grant.

Issue Nineteen: Defining “Prudent Lending Practices”

EDA received two different comments regarding the use of “Prudent Lending Practices.” One asked if EDA would define “Prudent Lending Practices.” The other stated that “Prudent Lending Practices” cause Recipients to not make certain loans, may cause a Recipient’s Capital Base to occasionally exceed 25 percent, and to be penalized for being prudent.

“Prudent Lending Practices” are currently defined in § 307.8 as generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests. Prudent Lending Practices include loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection and recovery actions. Prudent Lending Practices provide for compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral. The NPRM proposed no changes to this definition, and EDA makes none with this final rule.

With regards to the second comment on this issue, EDA does not penalize Recipients for making higher risk loans. As noted in the NPRM and in this final rule, EDA established the RLF program expressly to assist borrowers who are considered higher risk and cannot obtain credit from traditional financial institutions. Nevertheless, in order to ensure effective oversight and compliance with the fiduciary obligations of a Recipient that lends out Federal Grant funds, EDA felt it necessary to continue to apply a prudent lending standard. EDA also points out that EDA has removed the capital utilization standard, which required Recipients to ensure that at least 75 percent of their RLF Capital was

loaned or committed at all times. This should resolve this commenter’s concerns about its Capital Base exceeding the 25 percent threshold imposed by the old standard.

Issue Twenty: Reporting

EDA received 15 comments regarding reporting requirements. At least one commenter expressed support for the change to a reporting cycle based on the Recipient’s fiscal year cycle.

One commenter asked whether Recipients could continue to report semi-annually if they want to do so. If a Recipient qualifies for annual reporting based on their assessment through the Risk Analysis System, EDA would direct the Recipient to not submit semi-annual reports. While EDA has introduced this new, longer reporting cycle for Recipients who score as the highest performers according to the Risk Analysis System, in part, to ease the reporting burden on those Recipients, EDA was also motivated to make this change in an effort to ease the administrative burden on EDA’s Regional staff, given the large number of RLFs which they must monitor. As a result, EDA would not accept semi-annual reports from Recipients that are placed on an annual reporting cycle.

Issue Twenty-One: Legal Certification of Loan Documents

EDA received 31 comments regarding the proposed revision to the requirement for legal certification of loan documents. In the NPRM, EDA proposed moving the requirement for legal counsel review of standard RLF loan documents from § 307.15 to § 307.11(a) and, in the process, revised it to require the certification that standard loan documents are adequate and comply with the terms and conditions of the RLF Grant, RLF Plan, and applicable State and local law come directly from the RLF Recipient’s legal counsel rather than have the Recipient certify as to counsel review. Commenters complained that this revision could be costly and require additional time for Recipients to comply. A number of the commenters also appeared to believe this to be an on-going requirement through the life of the RLF.

EDA notes that this requirement is for the *standard* set of loan documents used by the RLF and referenced in the RLF Plan, not for the particular loan documents used for each loan made by the RLF. In moving this regulation to § 307.11(a), which lists pre-disbursement requirements, EDA intended to make clear that the legal certification was a one-time requirement

to be completed before EDA disburses RLF funds to the Recipient. EDA agrees that certification on an ongoing basis could be financially prohibitive. Recipients are free, however, to obtain legal review of their loan documents on a more frequent basis if desired. In light of the above, EDA believes that the revised language and its new location make this requirement sufficiently clear. As a result, EDA made no additional changes to this provision in the final rule.

Issue Twenty-Two: EDA-Provided Loan Documents

Six comments asked whether EDA would supply or possibly mandate template loan documents for use by all Recipients with their borrowers. EDA does not plan on providing or mandating templates for this purpose because each Recipient must comply with its own local and State lending laws, which can vary from Recipient to Recipient.

Issue Twenty-Three: Evidence Demonstrating Lack of Available Credit

Six commenters asked for examples of other evidence that could be provided as an alternative to a bank turn-down letter, as required by § 307.11(a)(1)(ii)(H). In the NPRM, EDA proposed replacing the requirement that RLF Recipients obtain and borrowers provide a signed bank turn-down letter to demonstrate that credit was not otherwise available with a more general requirement for evidence demonstrating that credit is not otherwise available on terms and conditions permitting the completion or successful operation of the activity to be financed. EDA broadened this requirement to help those borrowers who were unable to obtain a turn-down letter. EDA feels that providing specific examples of alternative documentation would undermine this goal. However, Recipients will outline in their RLF Plans what types of documentation would be approved for this purpose and can work with their Regional RLF Administrator to incorporate into the specific RLF's Plan further examples of what documentation may be sufficient for that particular RLF.

Issue Twenty-Four: Fidelity Bond Coverage

EDA received one comment regarding the requirement for Recipients to maintain fidelity bond coverage. The comment requested an exemption for public bodies, including State entities, from the mandates on the amount of coverage appropriate for Recipients. EDA does not agree that such an

exemption should be established. In the NPRM, EDA proposed a change to this requirement to provide that the minimum amount of coverage must equal the maximum loan amount allowed for in the EDA-approved RLF Plan. Our intent was to make this requirement easier for Recipients to follow. EDA also believed that this amount was reasonable. For these reasons, EDA made no additional changes to this requirement, which applies to all Recipients without exception.

Issue Twenty-Five: RLF Income/ Administrative Expenses

Fifteen comments expressed support for the revisions expanding the requisite period to charge administrative expenses against RLF Income from the same six-month Reporting Period to the same fiscal year. EDA sought this change as one of many designed to ease the burden on its RLF Recipients. This support helps to confirm that this change will meet that goal.

Issue Twenty-Six: Voluntarily Contributed Capital

EDA received two comments expressing confusion regarding Voluntarily Contributed Capital. These asserted that when a non-Federal Recipient contributes capital that exceeds the Local Share, this excess capital should not be treated as part of the Capital Base. In the commenters' view, the Recipient should have the opportunity to deposit, maintain, and withdraw these funds at its discretion from a separate bank account that is not governed by EDA guidelines and regulations. EDA respectfully disagrees with this position. As indicated in the newly added definition of "Voluntarily Contributed Capital" in § 307.8 and the language added to § 307.12(d), EDA considers funds that are voluntarily injected into the RLF an irrevocable component of the Capital Base and therefore subject to EDA regulations and policies. EDA added this language in response to past confusion about such infusions of additional funds. The scenario described exemplifies this confusion, as it appears to describe a form of leveraged funds, rather than Voluntarily Contributed Capital. In an additional effort to clarify the handling of Voluntarily Contributed Capital, the NPRM described our proposal to add a requirement that any Recipient wishing to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend must submit a written request that specifies the source of the funds to be added. EDA believes that this added language is

sufficient to prevent any further confusion on this matter.

Issue Twenty-Seven: Inclusion of RLFs in the Schedule of Expenditures for Federal Awards

EDA received three comments that asked whether RLFs would continue to be included in the Schedule of Expenditures of Federal Awards ("SEFA"). In the NPRM, EDA proposed clarifying the provision permitting the inclusion of a loan loss reserve in an RLF Recipient's financial statements, in accordance with generally accepted accounting principles to show the fair market value of an RLF loan portfolio. This provision had created confusion in the past with some RLF Recipients, who understood it to mean that the inclusion of a loan loss reserve also applied to the SEFA, which is the list of expenditures for each Federal award covered by the Recipient's financial statements and which must be reviewed as part of the audit process. This may result in inaccurate RLF valuations in the SEFA. EDA attempted to resolve this confusion by adding a sentence to § 307.15(a)(2) clearly stating that loan loss reserves were not to be used to reduce the nominal value of the RLF in the SEFA. EDA feels that this language is sufficiently clear to demonstrate the RLFs shall continue to be included in the SEFA.

Issue Twenty-Eight: Loan Leveraging Requirement

Seven commenters submitted their views on the loan leveraging requirements laid out in § 307.15(c). This paragraph requires Recipients to ensure funding from additional sources at a ratio of \$2 of additional funding to every \$1 of RLF loans. The requirement applies to Recipients' entire RLF portfolio, rather than to individual loans, and is effective for the duration of the RLF. Some of the comments on this issue asserted that this requirement is difficult to meet. The NPRM proposed some changes to this paragraph in an effort to clarify and broaden the possible sources of funds used for leveraging the RLF portfolio. With these changes, Recipients may use funds from State and local lending programs, in addition to the non-guaranteed portions and 90 percent of the guaranteed portions of Federal loan programs. Our hope is that these revisions, now finalized, will make it easier for Recipients to achieve the required amount of leveraging.

The remaining comments on this issue expressed confusion over the difference between leverage, Voluntarily Contributed Capital, and Local Share (or Matching Share). Each of these concepts

has a distinct meaning, and EDA believes the differences are sufficiently spelled out in the regulations. As stated in the first sentence of § 307.15(c), “RLF loans must leverage additional investment of at least two dollars for every one dollar of such RLF loans.” Local Share (or Matching Share) is defined in § 300.3 as “the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by a Recipient or third party as a condition of an Investment.” Thus, while leveraging refers to a condition of an RLF loan, Local Share refers to a condition of the RLF Grant from EDA. Voluntarily Contributed Capital is defined in § 307.8 as an RLF Recipient’s voluntary infusion of additional non-EDA funds into the RLF Capital Base that is separate from and exceeds any Local Share that is required as a condition of the RLF Grant. Voluntarily Contributed Capital is an irrevocable addition to the RLF Capital Base and must be administered in accordance with EDA regulations and policies.

Issue Twenty-Nine: Release of Federal Interest

A non-profit commenter suggested modifications to a sentence in EDA’s existing regulations that was unchanged in the NPRM and represents longstanding EDA practice. Specifically, the commenter contended that § 314.10(b) should provide that the Assistant Secretary “shall release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance.” The current language makes this release permissive (“may”) instead of mandatory (“shall”). The commenter believed that the release should be ministerial instead of discretionary. The commenter also desired a defined protocol for obtaining a release and documentation of such protocols in the Award itself so Recipients can monitor their own compliance and avoid delays in obtaining the release at the end of the Project’s useful life.

The use of “may” in the current regulation parallels section 601(d)(2) of PWEDA, which provides that EDA “may release” any real property interest in connection with a grant after the expiration of the 20-year useful life. See 42 U.S.C. 3211(d)(2). Further, the discretion provided to EDA to release the interest, or not as the case may be, is important to ensure that the Recipient is in compliance with all terms and conditions of the grant between the award of the Investment Assistance and the expiration of the useful life, as well

as to make certain that the covenants that extend beyond EDA’s release are properly recorded. See new 13 CFR 314.10(b), (c), (d)(3) and (e)(3). EDA declines to establish particular protocols because it is incumbent on the Recipient to request EDA remove the interest and procedures vary by jurisdiction. EDA does make Recipients aware of these general release requirements in the mortgage documents that are filed to record EDA’s interest.

Overview of Final Rule

Below EDA describes the regulatory revisions made by the final rule, including those changes discussed above that were in response to public comments and other minor consistency edits that were made throughout.

Part 300—General Information

EDA is making several clarifying revisions to the “Definitions” section of EDA’s regulations at § 300.3. These revisions are:

- In the definition of *In-kind contribution(s)*, EDA replaces references to 15 CFR parts 14 and 24, which set out the Uniform Administrative Requirements applicable to grants and agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations and State and Local Governments, respectively, with a reference to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- EDA revises the definition of *Project* by adding a reference to “or Stevenson-Wydler” between the reference to “PWEDA” and the word “and” to clarify that EDA may provide Investment Assistance to support a Project under Stevenson-Wydler.

- EDA revises the definition of *Recipient* by defining separately the concepts of *Co-recipients* and *Subrecipients* in EDA’s programs to clarify that when EDA awards Investment Assistance to more than one recipient, they are known as co-recipients and are generally jointly and severally responsible for fulfilling the terms of the Investment Assistance and to introduce the term *Subrecipient* as the eligible recipient that receives a subgrant under 13 CFR part 309.

- EDA adds a definition of *Stevenson-Wydler*, which is the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*) to incorporate the EDA programs created by the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010 (“COMPETES Act”) (Pub. L. 111–358

(January 4, 2011)), which amended Stevenson-Wydler to add the Office of Innovation and Entrepreneurship (15 U.S.C. 3720), the loan guarantees for innovative technologies in manufacturing (“ITM”) program (15 U.S.C. 3721), and the Regional Innovation Program (15 U.S.C. 3722), the centerpiece of which is the Regional Innovation Strategies (“RIS”) Program.

Part 301—Eligibility, Investment Rate, and Application Requirements

EDA has added the phrase “at its sole discretion” to the second sentence of § 301.2(b) (“*Applicant eligibility*”). Section 301.2(b) requires non-profit organizations that are applicants for investment assistance to include in their applications a resolution or letter from an authorized representative of a political subdivision of a State, acknowledging that the applicants are acting in cooperation with the officials of that subdivision. The second sentence of this paragraph allows EDA to waive this requirement for Projects of a significant Regional or national scope. By adding the phrase, “at its sole discretion,” to this second sentence, EDA is clarifying that such a waiver is solely at EDA’s discretion.

In the second sentence of § 301.5 (“*Matching share requirements*”), EDA is replacing the word “show” with the phrase “provide documentation to EDA demonstrating” to better explain what applicants are required to provide to fulfill EDA’s Matching Share requirements. In addition, EDA has added a sentence to § 301.5 to clarify that EDA retains the discretion to determine whether Matching Share documentation adequately addresses the requirements of the regulation.

EDA is simplifying § 301.7(a) (“*Investment assistance application*”) to state that for all of EDA’s Investment Assistance programs, application submission requirements and evaluation procedures and criteria will be set out in published Federal Funding Opportunity (“FFO”) announcements. Currently, the application and selection process under the Public Works and Economic Adjustment Assistance programs is a two-phase process that requires the submission of a proposal followed by a complete application. There are no submission deadlines and proposals and applications are accepted on an ongoing basis.

Likewise, EDA is revising § 301.8 (“*Application evaluation criteria*”) to remove specific evaluation criteria currently set out in paragraphs (a) through (f) from the regulation and to specify that program-specific evaluation criteria will be set out in applicable

FFOs. This will allow EDA additional flexibility to respond to changing economic conditions.

In § 301.11 (“*Infrastructure*”), EDA has added the parenthetical “(e.g., roads, sewers, and water lines)” in the second sentence of § 301.11(a) to provide several core examples of “basic economic development assets” referenced in the sentence.

Part 302—General Terms and Conditions for Investment Assistance

EDA has revised § 302.5 (“*Relocation assistance and land acquisition policies*”) to add a reference to Stevenson-Wydler by adding the phrase “or any other types of assistance” between “Investment Assistance” and “under PWEDA” and a reference to “, and Stevenson-Wydler” between “Trade Act” and “(States and political subdivisions of States. . . .)”. EDA also corrects a typo by replacing the phrase “nonprofits organizations” with “non-profit organizations”.

EDA revises § 302.6 (“*Additional requirements; Federal policies and procedures*”), to replace references to 15 CFR parts 14 and 24 with a reference to “2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

In § 302.20 (“*Civil rights*”), EDA adds a reference to “or Stevenson-Wydler” between the reference to “PWEDA” and the phrase “or by an entity”, as well as the phrase “or any other type of assistance under Stevenson-Wydler” between the reference to “Trade Act” and the phrase “in accordance with the following authorities” to clarify that nondiscrimination requirements apply to any type of assistance provided under Stevenson-Wydler.

In § 302.20(d) regarding written assurances of compliance with nondiscrimination requirements, EDA adds a reference to “and Stevenson-Wydler” between “PWEDA” and “all Other Parties”, as well as a reference to “or any other type of assistance under Stevenson-Wydler” between “Trade Act” and the phrase that begins with “must submit to EDA”.

In § 302.20(a)(2), EDA adds a reference to Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), which proscribe discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

Part 303—Planning Investments and Comprehensive Economic Development Strategies

EDA has made clarifications and modifications to its Planning program:

- Modifies § 303.6(b)(1) to replace “including” with “which may include” to clarify that the CEDS Strategy Committee has the discretion to determine which parties represent the main economic interests of the Region.
- Removes the last sentence of § 303.6(b)(1) as superfluous and revising that section to clarify that Indian Tribes and State officials may be represented on the CEDS Strategy Committee, along with all other groups listed, when representative of the economic interests of the region.
- Adds sentences to § 303.6(b)(3)(ii) to encourage participating counties or other areas within the EDD to remain engaged in the planning process.
- Revises § 303.7(c)(1) by, in the first sentence, replacing the phrase “without fulfilling all the requirements of paragraph (b) of this section” with the phrase “so long as it includes all of the elements listed in paragraph (b) of this section” and adding the new sentence, “In certain circumstances, EDA may accept a non-EDA funded CEDS that does not contain all the elements listed in paragraph (b) of this section” between the existing first and second sentences of this provision. This change is designed to emphasize that a non-EDA funded CEDS should include all elements of an EDA-funded CEDS and, at the same time, to reflect that in particular circumstances, such as a natural disaster or sudden and severe economic dislocation, EDA will accept a non-EDA funded CEDS that does not include the foundational CEDS elements.

Part 304—Economic Development Districts

In § 304.2(c)(2), EDA is replacing the word “including” with the phrase “which may include” to indicate that the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals should be included insofar as they represent principal economic interests of the Region and to reinforce the message that each District Organization must continue to demonstrate that its governing body is broadly representative of the principal economic interest of the Region and that it has the capacity to implement the EDA-approved CEDS.

Part 305—Public Works and Economic Development Investments

EDA has made two minor changes to part 305 to reflect the promulgation of the Uniform Guidance. Specifically, in paragraph (b) of § 305.6 (“*Allowable methods of procurement for construction services*”) and paragraph (c) of § 305.8 (“*Recipient-furnished equipment and materials*”), EDA replaces the references to “15 CFR parts 14 or 24, as applicable” with a reference to “2 CFR part 200”.

Part 306—Training, Research and Technical Assistance

EDA has made no changes to part 306 with this rule.

Part 307—Economic Adjustment Assistance Investments

EDA has made multiple changes to subpart B in its efforts to strengthen and clarify EDA’s RLF regulations to improve the agency’s ability to monitor RLF performance and provide targeted technical assistance through a risk-based management framework and changes designed to clarify and streamline RLF requirements. These changes are as follows:

- In § 307.6 (“*Revolving Loan Funds established for business lending*”), EDA is removing the reference to “business” lending in the title to that section, as well as the phrase in the second sentence of the provision regarding subpart B’s application to “business lending activities” and the phrase “to accommodate non-business RLF awards” regarding the application of special award conditions in the third sentence of the provision. These changes should remove confusion about the applicability of the RLF regulations to other types of lending. In addition, in the second sentence of § 307.6, EDA has added the phrase “EDA-funded” between the phrase “apply to” and the acronym “RLFs” to clarify that the RLF regulations in subpart B to part 307 apply to EDA-funded RLFs.

- In § 307.7 (“*Revolving Loan Fund award requirements*”), EDA has added language to clarify the compliance obligations for RLF Grants and update the reference to the location of the Compliance Supplement. In § 307.7(b), EDA adds the phrase “, as well as relevant provisions of parts 300 through 303, 305, and 314 of this chapter,” between the phrases “set forth in this part” and “and in the following publications”. In addition, in § 307.7(b)(2), EDA replaces the reference to “OMB Circular A-133” as the location of the Compliance Supplement with “, which is Appendix XI to 2 CFR

part 200” and with respect to the electronic availability of the Compliance Supplement, EDA replaced the general reference to the OMB Web site with the more specific site where all OMB Circulars, including the Compliance Supplement, are located.

- In § 307.8 (“Definitions”), EDA has added several new definitions and revised existing definitions to implement the proposed risk-based framework to manage RLF Grants. Specifically, EDA has added new definitions for the terms: Allowable Cash Percentage, Disbursement Phase, Risk Analysis System, RLF Capital Base, RLF Cash Available for Lending, RLF Recipient, and Voluntarily Contributed Capital. The definitions are set out in the regulatory text below.

In addition, EDA is revising the definitions of the following existing terms:

- In the existing definition of *Recapitalization Grants*, EDA replaces the phrase “capital base of an RLF” with the term “RLF Capital Base” for clarity.

- In the existing definition of *Reporting Period*, EDA is changing the Reporting Period to align with each RLF Recipient’s fiscal year end in order to ensure consistency between RLF reports using Form ED–209 and annual audit reports by replacing the phrase “means the period from April 1st to September 30th or the period from October 1st to March 31st” with the phrase “is based on the RLF Recipient’s fiscal year end and is on an annual or semi-annual basis as determined by EDA.”

- In the definition of *RLF Income*, EDA is deleting as repetitive the parenthetical “(excluding interest earned on excess funds pursuant to § 307.16(c)(2))” in the first sentence of the definition and corrected a citation in the final sentence of the definition by replacing the reference to “§ 307.16(c)(2)(i)” with a reference to “§ 307.20(h)”.

- EDA is reorganizing the regulations by placing all pre-disbursement and Disbursement Phase requirements into § 307.11. To accomplish this, EDA is revising the title of the section to read “Pre-disbursement requirements and disbursement of funds to Revolving Loan Funds” from “Disbursement of funds to Revolving Loan Funds”. In addition, the timing language in § 307.11(a) that formerly read “Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA” is being revised to read “Within 60 calendar days before the initial disbursement of

EDA funds, the RLF Recipient must provide the following in a form acceptable to EDA”, and then EDA is revising the regulations to list the certifications and evidence required before EDA will make an initial disbursement of Grant funds. This change reconciles what were different and sometimes conflicting timing requirements on these certifications.

- In addition, EDA has moved the following two provisions from § 307.15(b), which formerly set out pre-disbursement requirements regarding loan and accounting system documents, to § 307.11(a) titled “Pre-disbursement requirements”: (1) The requirement that a qualified independent accountant certify as to the adequacy of the RLF Recipient’s accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations (now § 307.11(a)(1)(i)); and (2) the requirement that the Recipient certify that the standard loan documents are in place and have been reviewed by legal counsel (now § 307.11(a)(1)(ii)).

- With respect to the requirement regarding accountant certification of the RLF Recipient’s accounting system, in re-locating this requirement, EDA is also revising it so it no longer requires certification directly from an accountant. This requirement now reads: “Certification from the RLF Recipient that the Recipient’s accounting system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations.” This change serves to increase the awareness of the need to maintain proper accounting systems to account for Federal funds while addressing the concerns raised regarding accountants’ ability to meet their mandate under the proposed language. EDA believes that this language, coupled with the increased scrutiny provided through the Risk Analysis System, will serve as an effective tool for ensuring compliance with Federal financial management requirements.

- With respect to the certification regarding legal counsel review of standard RLF loan documents formerly set out at § 307.15(b)(2), in relocating the requirement to § 307.11(a)(1)(ii), EDA also replaces the phrase “the Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by legal counsel” with “The RLF Recipient’s certification that standard RLF loan documents reasonably necessary or advisable for lending are in place and a certification

from the RLF Recipient’s legal counsel”. This change not only streamlines this process but also ensures that the Recipient’s legal counsel reviewed the standard loan documents and verified that those documents are adequate and in compliance with the applicable requirements.

- In § 307.11(a)(1)(ii)(H), EDA replaced the requirement that RLF Recipients obtain and borrowers provide a signed bank turn-down letter to demonstrate that credit is not otherwise available with the more general requirement for evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. This revision allows EDA to remove as redundant the requirement for RLF Plans that alternative evidence to a signed bank turn-down letter be allowed.

- The provision regarding evidence of fidelity bond coverage remains in place in § 307.11(a), but is redesignated as § 307.11(a)(1)(iii). In addition, EDA is removing the phrases “the greater of” and “, or 25 percent of the RLF Capital base” from redesignated § 307.11(a)(1)(iii), thereby revising the provision to establish the minimum amount of coverage required as the maximum loan amount allowed for the EDA-approved RLF Plan, and removing the alternative approach permitting coverage of at least 25 percent of the RLF Capital Base. This alternative was difficult to meet as it had required Recipients to regularly change the amount of fidelity bond coverage to remain in compliance, while also yielding approximately the same amount of coverage.

- EDA has also added language following § 307.11(a)(1)(iii), in new § 307.11(a)(2), to clarify that the RLF Recipient must maintain the adequacy of the RLF’s accounting system and standard RLF loan documents, as well as records and documentation to demonstrate that these requirements are met, throughout the RLF’s operation. This maintenance language includes a cross-reference to new § 307.13(b)(3) where EDA underscores that the RLF Recipient must maintain records to document compliance with these requirements. EDA also makes conforming changes to incorporate these requirements into a list format. Because EDA is moving the language regarding the accountant certification from § 307.15 to § 307.11, EDA is removing the language in § 307.11(a)(2) that cited to the certification required under § 307.15.

- In order to simplify the language regarding the amount of Grant fund disbursements in the first sentence of § 307.11(c), EDA is replacing the phrase “not to exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with Grant funds” with the phrase “be the amount required to meet the Federal share requirement of a new RLF loan”.

- EDA is adding new language to § 307.11(c) to clarify that RLF Income earned during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs and increase the RLF Capital Base. However, RLF Income earned during the Disbursement Phase need not be disbursed to support new RLF loans, unless otherwise specified in the terms and conditions of the RLF Grant. EDA is also adding language clarifying that repaid loan principal, like RLF Income, must be placed in the RLF Capital Base during the Disbursement Phase and can be used to reimburse administrative costs during this Phase. Section 307.11(c) now reads as set out in the regulatory text below.

- EDA is making a non-substantive revision to § 307.11(d) to capitalize the word “Grant”.

- EDA has placed all provisions that set out Local Share requirements in § 307.11(f), which requires re-locating the substance of the provision at § 307.17(d) regarding use of In-Kind Contributions to satisfy Local Share requirements. Accordingly, EDA removed former § 307.17(d) and re-numbered the regulation accordingly. In revised § 307.11(f), EDA adds the phrase “, which must be specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs,” between the term “In-Kind Contributions” and the phrase “and cash Local Share” in the first sentence of § 307.11(f)(2) to reflect that In-Kind Contributions are rarely necessary or reasonable for accomplishment of the RLF program and that most RLF Local Share is cash.

- In addition, to consolidate all pre-disbursement and disbursement requirements into § 307.11, EDA is relocating the provisions regarding loan closing and disbursement schedules, as well as time schedule extensions, from § 307.16(a) and (b), respectively, to § 307.11 and redesignating them as § 307.11(g) and (h), respectively. EDA also makes non-substantive conforming changes to reflect defined terms and

correct cross-references because of this reorganization. Specifically, EDA is replacing the phrase “initial RLF Capital Base” with “RLF Grant” in the final sentence of redesignated § 307.11(g)(1) to clarify the corpus of funds to which the lending schedule applies; replacing the cross-reference to “§ 307.16(b)” in redesignated § 307.11(g)(2)(iii) with a reference to “paragraph (h) of this section” to reflect the reorganization of these provisions; correcting a typo by replacing the plural “requests” with a singular “request” in the last sentence of redesignated § 307.11(h)(1); and dividing redesignated § 307.11(h)(2) into two sentences for clarity and emphasis.

- EDA is renaming the title of § 307.12 to “*Revolving Loan Fund Income requirements during the Revolving Phase; payments on defaulted and written off Revolving Loan Fund loans; Voluntarily Contributed Capital*” to clarify that the provision describes certain requirements that apply during the Revolving Phase of the RLF and addresses other topics, rather than solely setting out RLF Income requirements. EDA has also added the introductory phrase “During the Revolving Phase,” to the first sentence of § 307.12(a).

- EDA is revising § 307.12(a) to clarify that RLF Income earned in one fiscal year of the RLF Recipient must be used to cover administrative costs accrued during the same fiscal year, instead of the same six-month Reporting Period. Accordingly, in § 307.12(a)(1), EDA is replacing the word, “incurred” with “accrued,” and, in § 307.12(a)(1) and (2), EDA replaced the phrase “six-month Reporting Period” with the phrase “fiscal year of the RLF Recipient.” In § 307.12(a)(3), EDA replaces the phrase “Reporting Period” with “fiscal year”. In addition, EDA is making a non-substantive change in § 307.12(a)(1) to add the phrase “is earned” after “Such RLF Income” to clarify that RLF Income is earned by the RLF Recipient as opposed to administrative costs, which are incurred by the RLF Recipient. In addition, in § 307.12(a)(3), EDA replaces the phrase “RLF Capital base” with the proposed defined term “RLF Capital Base”.

- EDA is replacing former § 307.12(a)(4), which required the submission of an RLF Income and Expense Statement (*i.e.*, Form ED-209I), with language that prohibits RLF Recipients from using funds in excess of RLF Income for administrative costs in a Recipient’s fiscal year unless directed to do so by EDA, sets the expectation that administrative costs should be kept to a minimum, and states that the percentage of RLF Income used for

administrative costs will be a measure under the Risk Analysis System.

- In § 307.12(b), which outlines compliance guidance for charging costs against RLF Income, EDA makes revisions to reflect the promulgation of the Uniform Guidance. Specifically, in revised § 307.12(b)(1), EDA specifies that for RLF Grants made or recapitalized on or after December 26, 2014, the RLF Recipient must comply with the administrative and cost principles set out in 2 CFR part 200. Accordingly and in compliance with the Uniform Guidance, in revised § 307.12(b)(2), EDA specifies that for RLF Grants awarded before December 26, 2014, unless otherwise indicated in the terms of the Grant, the RLF Recipient must comply with the cost principles set out in 2 CFR parts 225 (for State, local, and Indian tribal governments); 230 (for non-profit organizations other than institutions of higher education, hospitals, and other organizations); or 220 (for educational institutions), as applicable. EDA is adding a new § 307.12(b)(3) to specify that regardless of when an RLF Grant was awarded or recapitalized, the audit requirements set out as subpart F to 2 CFR part 200 apply to audits of the RLF Recipient for fiscal years beginning on or after December 26, 2014, as does the Compliance Supplement, as appropriate.

- In § 307.12(c), EDA makes minor adjustments to clarify that the prioritization of payments on RLF loans includes payments on both defaulted RLF loans and those that have been written off, adding the phrase “and written off” to the heading of § 307.12(c) and the first sentence of the provision between the word “defaulted” and the phrase “RLF loan”. In addition, EDA is updating the cross reference to “§ 307.21” to reflect the reorganization of the noncompliance provisions.

- EDA is also adding new § 307.12(d) to introduce additional clarifying language regarding the treatment of the new defined term Voluntarily Contributed Capital. In addition to adding a definition to clarify the process for contributing such additional capital to an RLF and to explain how the additional capital is treated once added to the RLF Capital Base, EDA has also added a provision within the section on pre-disbursement and disbursement requirements to specify that when an RLF Recipient wishes to add additional capital to the RLF Capital Base, the Recipient must submit a written request that specifies the source of the funds to be added. Upon approval by EDA, the Voluntarily Contributed Capital becomes an irrevocable part of the RLF

Capital Base and may not be subsequently withdrawn or separated from the RLF.

- EDA is revising the RLF reporting requirements to specify that records for administrative expenses must be kept for three years from the submission date of the last report that covers the fiscal year in which the costs were recorded, rather than the last semi-annual report that covers the Reporting Period in which the costs were incurred. Therefore, in § 307.13(b)(2), EDA is deleting the phrase “last semi-annual” between the phrase “date of the” and the word “report” and replaced “Reporting Period” with “fiscal year”. In addition, EDA is revising § 307.13(a)(3) to specify that, consistent with the requirements of § 307.11(a), for the duration of RLF operations, Recipients must retain records to demonstrate the adequacy of the RLF’s accounting system, that standard RLF loan documents are in place, and that sufficient fidelity bond coverage is maintained. In addition, the existing requirement to make records available for inspection is redesignated as new § 307.13(b)(2).

- EDA is removing the stipulation that all RLF reports be submitted to EDA on a semi-annual basis, thereby permitting EDA to establish a reporting frequency (annual or semi-annual) based on the objective risk presented by a given RLF, and allowing EDA to more closely monitor RLF program performance and engage with RLF Recipients to identify and address existing and potential challenges. Accordingly, EDA is revising the title of § 307.14 to read “*Revolving Loan Fund report*” and in § 307.14(a), replacing the phrase “must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission” with “must complete and submit an RLF report, using Form ED–209 or any successor form, in a format and frequency as required by EDA.”

- To improve the accuracy and quality of the information provided during the regular reporting process, EDA now requires that RLF Recipients certify as part of their regular reporting to EDA that the RLF is operating in accordance with their RLF Plan and that the information being provided is complete and accurate. As such, in § 307.14(b), EDA is removing the adjective “semi-annual” and added the phrase “and that the information provided is complete and accurate.”

- EDA is deleting the second sentence of § 307.14(b) to clarify that proposals to modify RLF Plans cannot be made through the reporting process. Such modifications can only be done by

separate notification to EDA as described in § 307.9(c).

- As noted previously, because EDA no longer requires the submission of an RLF Income and Expense Statement, EDA is removing § 307.14(c) in its entirety.

- EDA is clarifying the provision permitting the inclusion of a loan loss reserve in an RLF Recipient’s financial statements, in accordance with generally accepted accounting principles (“GAAP”) to show the fair market value of an RLF loan portfolio, by adding a sentence to the end of § 307.15(a)(2) that clearly provides that loan loss reserves are non-cash entries only and shall not be used to reduce the nominal value of the RLF in the Schedule of Expenditures of Federal Awards. In addition, in the first sentence of § 307.15(a)(2), EDA replaces the phrase “fair market” with “adjusted current” to allow a loan loss reserve to be recorded as a non-cash entry to show the adjusted current value, which will more accurately reflect how RLF portfolios are valued. In addition, EDA is revising § 307.15(a)(1) to reflect the promulgation of the Uniform Guidance, replacing the reference to “in OMB Circular A–133” with “the audit requirements set out as subpart F to 2 CFR part 200” and, after the reference to the Compliance Supplement, adding the phrase “which is Appendix XI to 2 CFR part 200,” to help the reader locate the Supplement.

- EDA is renaming § 307.15(c), which was re-lettered from § 307.15(d) to reflect the relocation of loan and accounting systems certification requirements to § 307.11(a). This paragraph is now named “RLF leveraging”. In addition, EDA is replacing the phrase “private investment” with “additional investment” in § 307.15(c)(1) and added new § 307.15(c)(1)(iv) to read “Loans from other State and local lending programs.” This addition will broaden RLF leveraging requirements to enable Recipients to use funds from State and local lending programs, in addition to the non-guaranteed portions and 90 percent of the guaranteed portions of Federal loan programs.

- EDA has adopted a Risk Analysis System to evaluate and manage the performance of RLF Recipients to make the RLF program more effective and efficient. Such an approach will provide Recipients with a set of portfolio management and operations standards to evaluate their RLF program and improve performance. It will also provide EDA with an internal tool for assessing the risk of each Recipient’s loan operations and identifying RLF

Recipients that require additional monitoring, technical assistance, or other action. This approach to risk-based analysis and management is modeled on the Uniform Financial Institutions Rating System (the “CAMELS” rating system), used by regulators to assess financial institutions and to identify those in need of extra assistance or attention. The CAMELS system produces a composite rating by examining six components: Capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. EDA intends to use factors that will likely include capital, assets, management, earnings, liquidity, strategic results, and financial controls, and to use the information and data currently required to be submitted by RLF Recipients in regular reporting to assign risk analysis ratings to each RLF. Scores will be assigned for each factor on a numerical scale of one to three, with three being the highest score. The scores will be totaled to determine each RLF Recipient’s classification as A, B, or C, with an A classification reserved for the highest performers, B identifying those who are generally managing their program well but who may need some assistance on one or more areas, and C characterizing those Recipients that face serious challenges with their programs and require significant improvement. Recipients categorized as B or C will generally be given a reasonable amount of time to become compliant with the relevant requirements and improve their score. However, persistent noncompliance may result in EDA undertaking appropriate compliance actions, including requiring a corrective action plan, disallowing Grant funds, or suspending or terminating the RLF Grant. EDA has issued a separate **Federal Register** Notice concurrently with this final rule seeking comment on the set of performance measures that EDA is proposing to use for the initial round of scoring under the Risk Analysis System.

- To implement this transition, EDA is replacing EDA’s current management scheme, which consists primarily of the capital utilization standard (see additional details on changes to this standard below) and monitoring loan default rates, with the Risk Analysis System. Accordingly, EDA is completely revising § 307.16 to name it “Risk Analysis System” and incorporates a description of the Risk Analysis System in paragraph (a) and its compliance framework in paragraph (b). As noted above, the final rule is relocating former paragraphs (a) and (b) of § 307.16, which sets out requirements for loan closing

and disbursement schedules and time schedule extensions, respectively, as paragraphs (g) and (h) to § 307.11. EDA also removes paragraphs (c) and (d) of the former § 307.16, which outlines the capital utilization standard and EDA's system for monitoring loan default rates, respectively, in order to incorporate the new concept of Allowable Cash Percentage (explained more fully below in the discussion of changes made to § 307.17).

- EDA is revising the title of § 307.17 to read “*Requirements for Revolving Loan Fund Cash Available for Lending*” and is replacing the term *RLF Capital* with the newly defined term *RLF Cash Available for Lending* in the first sentence of § 307.17(a) and the heading and first sentence of paragraph (c) and paragraph (c)(6)(ii) of § 307.17. In addition, EDA adds the phrase “shall be deposited and held in an interest-bearing account by the Recipient and” following “RLF Cash Available for Lending shall be” in the first sentence of § 307.17(a) to clarify how RLF Recipients must maintain RLF Cash Available for Lending.

- In addition, EDA is inserting the requirements for Allowable Cash Percentage in new § 307.17(b) and is relettering former § 307.17(b), which has been revised to lay out restrictions on RLF Cash Available for Lending, as § 307.17(c). Through this change, EDA is adopting the concept of an *Allowable Cash Percentage*, which will be a component of the Risk Analysis System, to replace the capital utilization standard, which previously required Recipients to manage their lending and repayment schedules so that at all times at least 75 percent of their RLF Capital is loaned or committed. The Allowable Cash Percentage reflects EDA's approach to address the fact that different regions face very different economic and access to capital conditions and that a one-size-fits-all capital utilization standard can be difficult for RLF Recipients to meet and for EDA to implement. Each year, each EDA Regional Office will calculate the average percentage of RLF Cash Available for Lending across their RLF portfolio and will notify RLF Recipients by January 1 of each year of the Allowable Cash Percentage to be used during the Recipient's ensuing fiscal year. RLF Recipients will be required to manage their repayment and lending schedules to provide that at all times, their amount of RLF Cash Available for Lending does not exceed the Allowable Cash Percentage. Whereas noncompliance with the capital utilization standard frequently triggered automatic sequestration, with the more

flexible Allowable Cash Percentage approach and the adoption of a Risk Analysis System, EDA will no longer require automatic sequestration of what is currently referred to as “excess funds,” the difference between the actual percentage of RLF Capital loaned and the capital utilization standard. Instead, sequestration will be considered as one of a range of possible tools used to ensure compliance with the terms of the RLF Grant.

- In § 307.17(c), EDA has added language clearly stating that RLF Cash Available for Lending may not be used to: (1) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval; (2) support operations or administration of the RLF Recipient; or (3) undertake any activity that would violate the requirements found in 13 CFR part 314, including § 314.3 (“*Authorized Use of Property*”) and § 314.4 (“*Unauthorized Use of Property*”). These requirements are being added as new paragraphs (c)(7), (8), and (9) to § 307.17.

- EDA is making minor clarifying changes to the list of transactions for which RLF Cash Available for Lending may not be used. Specifically, in redesignated § 307.17(c)(3), EDA replaces the sentence “Provide for borrowers' required equity contributions under other Federal Agencies' loan programs” with “Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan program”. In addition, in the second sentence of redesignated § 307.17(c)(6)(ii), EDA replaces the phrase “RLF Capital” with “RLF funds” and the phrase “reasonable period of time, as determined by EDA” with “reasonable time frame approved by EDA”. As noted above, former § 307.17(d) is now removed so all provisions regarding In-Kind Contributions are located in § 307.11(f).

- EDA has removed former paragraph (e) in § 307.17, which provided for compliance and loan quality reviews by independent third parties. This provision was deemed unnecessary as this type of review could be accomplished through other mechanisms already available.

- EDA is clarifying that it can approve changes to a Lending Area at the request of an RLF Recipient by adding language to specify that an approved Lending Area remains in place until EDA approves a subsequent request for a New Lending Area. In § 307.18(a)(2), EDA added the introductory phrase “Following EDA approval,” and replaced the concluding phrase “shall remain in place

indefinitely following EDA approval” with “shall remain in place until EDA approves a subsequent request for a New Lending Area”.

- EDA has also made revisions to distinguish between the addition of lending areas and mergers of RLFs. EDA is removing the word, “merged,” from the discussion of additional lending areas in the second sentence of § 307.18(a)(1) to clarify that merging RLFs and adding lending areas are two different transactions. EDA is also clarifying the terminology in § 307.18(b)(1) used to describe a consolidated RLF by replacing the word “surviving” with the word “combined”. This change is designed to make clearer the distinction between consolidations, which involve a single RLF Recipient, and mergers, which involve multiple RLF Recipients.

- For clarity, EDA has reorganized the compliance regulations by separating them into one section describing what actions are considered noncompliance (new § 307.20 with the title “*Noncompliance*”) and another section listing remedies for noncompliance (new § 307.21 with the title “*Remedies for noncompliance*”). This reorganization is designed to help all RLF stakeholders understand problematic practices and appropriate remedies.

- EDA also revised the list of problematic practices that could result in disallowances of a portion of an RLF. EDA has removed the following from this list to reflect their incorporation into the Risk Analysis System: (1) Having RLF loans that are more than 120 days delinquent; and (2) having excess cash sequestered for 12 months or longer without an EDA-approved extension request. Despite being removed from the list of practices that could result in a disallowance, EDA will continue to monitor loan delinquency through the Risk Analysis System and by reviewing the procedures for dealing with delinquent loans as set out in each RLF Recipient's RLF Plan. With regards to excess sequestered cash, as discussed above, the automatic sequestration of funds is now being addressed by the Risk Analysis System and the use of an Allowable Cash Percentage. However, EDA does reserve the right to take appropriate compliance action (including requiring sequestration) if an RLF Recipient holds RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base without an EDA-approved extension request.

- EDA has also clarified the provision regarding a Recipient's duty to compensate the Federal Government for

the Federal Share of the RLF Grant in the event that the Recipient requests termination of the Grant (§ 307.21(d)). EDA revised this regulation to make it clearer that the Recipient must compensate for the Federal share of the RLF Capital Base, including the monetary value of all outstanding loan principal.

- EDA has also removed the provision that required Recipients, after termination of an RLF Grant, to seek EDA approval to retain and use for other economic development activities the RLF Recipients' share of RLF Income generated by the RLF. By removing this provision, EDA is clarifying that Recipients do not need to seek EDA approval to use their share of funds returned to them following termination of an RLF.

Part 308—Performance Incentives

EDA is making no changes to part 308.

Part 309—Redistributions of Investment Assistance

EDA has made several revisions to part 309, which sets forth EDA's policies regarding redistributing grant funds in the form of subgrants, loans, or other appropriate assistance. In both §§ 309.1 and 309.2, EDA clarifies EDA's practice of requiring the Eligible Recipient under the original award to comply with special award conditions and any Subrecipient (in accordance with the newly defined term at § 300.3) to provide appropriate certifications of compliance with relevant legal requirements. Accordingly, EDA has added the sentence "EDA may require the Eligible Recipient under the original Investment award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements" to §§ 309.1(a) and 309.2(b). In addition, EDA has added language to refer to the newly defined term Subrecipient in § 300.3 by adding the phrase ", generally referred to as a Subrecipient," to the first sentence of § 309.1(a) and § 309.2(a)(1).

Part 310—Special Impact Areas

EDA is making no changes to part 310.

Parts 311 and 312—[Reserved]

Part 313—Community Trade Adjustment Assistance

EDA is making no revisions to part 313.

Part 314—Property

EDA is making revisions to multiple provisions in part 314 to clarify

terminology and its authority to release the Federal Interest 20 years after the date of the award of Investment Assistance. The changes are, as set out in the NPRM, as follows:

- For clarity and to conform to the changes made to the RLF program, EDA is adding a phrase to clarify that *Personal Property* includes the *RLF Capital Base*, adding the phrase ", including the RLF Capital Base as defined at § 307.8" to the definition of *Personal Property* set out at § 314.1.

- In addition, for clarity and to avoid repetitive language throughout part 314, EDA has added a definition of *Project Property* to read as set out in the regulatory text below.

- In addition, EDA has simplified the definition of *Real Property* to clarify that, in the context of part 314 and for the purposes of EDA Investment Assistance, Real Property may include Property that is served by the construction of Project infrastructure, where such infrastructure is not located on or under the Property. Accordingly, EDA is replacing the word "improved" in the second sentence of the definition with the word "served" and removing the phrase "that are not situated on or under the land". EDA has also put the exemplar list of infrastructure projects "such as roads, sewer, and water lines" in parentheses and removed the phrase "; but not limited to" from the exemplar list because it is unnecessary. Removing "but not limited to" is not substantive and does not make the list exclusive.

- In § 314.2 ("Federal Interest"), EDA is adding a sentence to the beginning of paragraph (a) to set out the general expectation that title to Project Property vests upon acquisition with the Recipient. In addition, in the now second sentence of § 314.2(a), EDA is replacing the phrase "Property that is acquired or improved, in whole or in part, with Investment Assistance" with the newly defined term Project Property. For clarity, EDA has split the sentence regarding the purpose of the Federal Interest and how it is secured into two sentences and replace the word "secures" in the now third sentence with the word "ensures" and also add the phrase "EDA Project requirements, including those related to" between "ensures compliance with" and "the purpose, scope, and use of a Project". With respect to the method by which Recipients must secure the Federal Interest, EDA has replaced the phrase "and is often reflected by" with the phrase "The Recipient typically must secure the Federal Interest through".

- In § 314.2(b), EDA replaces the phrase "Property acquired or improved, in whole or in part, with Investment

Assistance" with the newly defined term Project Property. In addition, to highlight that nondiscrimination requirements continue to apply even if the Federal Government is compensated for the Federal Share, EDA has added the phrase "except as provided in § 314.10(e)(3) regarding nondiscrimination requirements" to the end of § 314.2(b).

- In § 314.3 ("Authorized Use of Property"), EDA has revised the title of the regulation to read "Authorized Use of Project Property" to reflect the newly defined term Project Property. EDA has also divided former paragraph (e), which addresses requirements for replacement Personal Property and Real Property, into two separate paragraphs that address the requirements of the different types of Property. Accordingly, EDA has moved the sentence that addresses replacement Real Property that was formerly the final sentence of § 314.3(e) into new § 314.3(f) and redesignated the regulation accordingly, redesignating current § 314.3(f) as new § 314.3(g). In addition, EDA has added paragraph headings to help the reader better navigate the section and find information more quickly. Accordingly, EDA added the heading "General" to § 314.3(a), "Project Property that is no longer needed for Project purposes" to § 314.3(b), "Real Property for sale or lease" to § 314.3(c), "Property transfers and Successor Recipients" to § 314.3(d), "Replacement Personal Property" to § 314.3(e), "Replacement Real Property" to § 314.3(f), and "Incidental use of Project Property" to § 314.3(g).

- In both § 314.3(a) and (b), EDA has replaced the phrase "Property acquired or improved, in whole or in part, with Investment Assistance" with the newly defined term "Project Property" and in the first sentence of both § 314.3(d) and (g), EDA added the word "Project" before "Property" to incorporate the newly defined term "Project Property." Finally, in § 314.3(g), which addresses under what circumstances EDA can approve an incidental use of Project Property, EDA has added the phrase "undermine the economic purpose for which the Investment was made" between "otherwise" and "or adversely" to clarify that in addition to not adversely affecting the economic useful life of the Property, an approved incidental use of Project Property must not undermine the purpose of the Investment.

- In § 314.4 ("Unauthorized Use of Property"), EDA has revised the title of the regulation to read "Unauthorized Use of Project Property" to reflect the newly defined term "Project Property". In addition, EDA has added paragraph

headings to help the reader navigate the regulation, adding the heading “*Compensation of Federal Share upon an Unauthorized Use of Project Property*” to § 314.4(a), “*Additional Unauthorized Uses of Project Property*” to § 314.4(b), and “*Recovery of the Federal Share*” to § 314.4(c). In § 314.4(a), EDA has made minor clarifying changes, specifically replacing “EDA’s interest” with “the Federal Interest”, capitalizing the word “Government” as used in the term “Federal Government”, replacing “Property acquired or improved in whole or in part with Investment Assistance” with the newly defined term “Project Property”, and replacing a reference to 15 CFR part 14 or 24 with “2 CFR part 200”. EDA has made similar clarifying changes to § 314.4(b), replacing “EDA’s interest” with “the Federal Interest” and “Real Property or tangible personal property acquired or improved with EDA Investment Assistance” with the phrase “Project Real Property or tangible Project Personal Property”. Finally, in § 314.4(c), in the first sentence EDA is adding the word “Project” before two instances of the word “Property”, replacing “its interest” with “the Federal Interest”, and capitalizing the word “Government” in “Federal Government”. In the final sentence of the paragraph, EDA has capitalized “Government” in “Federal Government” and added a reference to the ongoing requirement that Project Property not be used in violation of nondiscrimination requirements even after the compensation of the Federal Share by adding the phrase “, except for the nondiscrimination requirements set forth in § 314.10(d)(3)” to the end of the paragraph.

- Section 314.5 (“*Federal Share*”) addresses the portion of Project Property attributable to EDA’s Investment Assistance. In § 314.5(a), EDA has added two new sentences to explain EDA’s usual practice of relying on a certified appraisal prepared by a licensed appraiser to determine the fair market value of Project Property and has also provided that in certain extraordinary circumstances, and at the agency’s sole discretion, EDA may rely on an alternative method to determine the fair market value, such as the amount of the award of Investment Assistance, the amount paid by a transferee, or tax assessments. EDA recognizes that in certain, very unusual circumstances, such as when Property is located in an extremely remote location or, for whatever reasons, there are no buyers for similar Property, it may be

impossible or cost prohibitive to obtain a certified appraisal and wanted to provide for this situation. Therefore, EDA has added the following sentences to the paragraph: “EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA’s sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee.” In addition, EDA has added the word “Project” before “Property” in the first sentence of the paragraph and the phrase “or other valuation as determined by EDA” between “fair market value” and “of the Property” in the final sentence of the paragraph.

- In § 314.6 (“*Encumbrances*”), EDA has revised paragraph (a) to replace the phrase “Recipient-owned Property acquired or improved in whole or improved in whole or in part with Investment Assistance” with the newly defined term “Project Property”. In addition, in the exception that permits encumbrances only to secure a grant or loan made by a governmental body, EDA has added the phrase “so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance” to reflect the requirement that the Recipient expeditiously disclose any such encumbrance to EDA. In § 314.6(b)(3) on pre-existing encumbrances, EDA has added the phrase “and disclosed to EDA” between “in place” and “at the time” to underscore that the Recipient must disclose pre-existing encumbrances to EDA and added “, in its sole discretion,” to underscore that the approval of pre-existing encumbrances is at EDA’s discretion. In addition, because pre-existing encumbrances pose the same risks to Project Property as other types of encumbrances, EDA has revised § 314.6(b)(3) to incorporate certain requirements from the subparagraphs setting out requirements for encumbrances proposed both proximate to and after Project approval: Namely, that for EDA to approve a pre-existing encumbrance, in addition to the requirement that EDA determine that the requirements of § 314.7(b) are met, EDA must also determine that the terms and conditions of the encumbrance are

satisfactory and that there is a reasonable expectation that the Recipient will not default on its obligations. EDA renumbered these three requirements as § 314.6(b)(3)(i), (ii), and (iii), respectively.

- EDA is making minor stylistic changes to § 314.6(b)(4)(v)(B) and (b)(5)(v)(B) to add the phrase “A Recipient that is a” to the beginning of the subparagraph to maintain the parallel nature of the list. In addition, in § 314.5(c), EDA has replaced the phrase “Recipient-owned Property” with “Project Property”. As specified in the government-wide grant regulations set out at 2 CFR part 200 and noted in the proposed revisions to § 314.2(a), Project Property generally vests upon acquisition in the Recipient, and so the adjective “Recipient-owned” is unnecessary.

- In § 314.7 (“*Title*”), EDA has added language to paragraph (a) to highlight that certain limited exceptions apply to the title requirement, make the provision more readable, and refer directly to the definition of Real Property set out in § 314.1. As such, EDA is adding the introductory phrase “Except in those limited circumstances identified in paragraph (c) of this section” to the first sentence. In addition, EDA has relocated the temporal requirement of when title must be obtained to the beginning of the sentence by adding “, at the time Investment Assistance is awarded” between “in paragraph (c) of this section” and “the Recipient”. For clarity with respect to EDA’s requirements, EDA is including a reference to the definition of Real Property in § 314.1 to the first sentence of the paragraph. EDA has also broken into a separate sentence the requirement that the Recipient maintain title at all times during the Estimated Useful Life of the Project, which EDA is placing as the second sentence of the paragraph. EDA has replaced the phrase “Real Property required for a project” with the defined term “Project Real Property” in both the first and third sentences of § 314.7(a).

- Throughout paragraph (c) of § 314.7, which outlines the exceptions to EDA’s title requirement, EDA has replaced the phrase “the Real Property required for a Project” with “Project Real Property”. EDA has added the clause “at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project” to the introductory sentence at § 314.7(c), added “Project” before “Real Property” twice in § 314.7(c)(1), and capitalized “Government” in “Federal Government” in § 314.7(c)(1)(ii). In § 314.7(c)(4), which clarifies the

exception for the title requirement when a Project includes construction on government-owned roads, EDA has made additional non-substantive changes to replace the phrase “public highway” with the more descriptive “State or local government owned roadway or highway” in the heading, first sentence of § 314.7(c)(4), and first clause of § 314.7(c)(4)(ii)(B). To avoid excessive wordiness, EDA has maintained the phrase “public highway” where it exists in the remainder of the provision, but revise it to read “public roadway or highway” and note that the exception in this provision is intended to apply to State or local government owned roadways or highways.

- In § 314.7(c)(5)(i), which sets out EDA’s requirements when the purpose of a Project is to construct facilities to serve Recipient or privately owned Real Property, EDA is making clarifying syntax changes to revise the phrase “Real Property, including industrial or commercial parks, for sale or lease” to read “Project Real Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease”. In paragraph (c)(5)(i)(A), EDA is replacing the phrase “required for such Project” with the clarifying phrase “intended for sale or lease” and has added a cross-reference to the appropriate title requirements by adding the phrase “in accordance with paragraphs (c)(5)(i)(C) through (E) of this section” to the end of the paragraph. In paragraph (c)(5)(i)(B), EDA has replaced “required for such Project” with “intended for lease”, and in paragraph (c)(5)(iii) EDA has capitalized “Owner”.

- Section 314.8 (“*Recorded Statement for Project Real Property*”) sets out requirements for recording the Federal Interest in Project Real Property. Throughout the provision, EDA has replaced three instances of “EDA’s interest” with “the Federal Interest” and use the defined term “Project Real Property” as appropriate, including using the term in the heading of the section and replacing “the Property acquired or improved in whole or in part with the EDA Invest Assistance” in paragraph (a), “Real Property” in paragraph (b), and “Project Property” in paragraph (d).

- In § 314.9 (“*Recorded statement for Personal Property*”), EDA is revising the provision to clarify that the recorded statement, which is generally a Uniform Commercial Code Financing Statement (“Form UCC-1”), provides notice of the Federal Interest in Project Personal Property, but does not create a lien on the Property by inserting the phrase “provide notice of the Federal Interest

in all Project Personal Property by executing” between “the Recipient shall” and “a Uniform Commercial Code Financing Statement” in the first sentence of the provision. In addition, EDA uses the term “Project Personal Property” appropriately throughout the provision, including in the title to the section, inserting “Project” before the phrase “Personal Property, acceptable in form and substance to EDA” in the first sentence of the section, and replacing “Personal Property acquired or improved as part of the Project” with “all Project Personal Property” in the second sentence of the section, and replacing “EDA’s interest” with “the Federal Interest” in the first sentence to the regulation.

- Section 314.10 (“*Release of EDA’s Property Interest*”) describes EDA’s procedures for releasing the agency’s interest in Project Property. EDA is replacing the term “EDA’s Property Interest” with “the Federal Interest” in the titles of both subpart D and § 314.10 and throughout § 314.10 for clarity and consistency. This change does not implicate any substantive change to the Federal Government’s undivided equitable reversionary interest in award property, but is intended to ensure consistency within EDA’s own regulations as well as with 2 CFR part 200. In addition, in § 314.10(a), EDA is replacing the phrase “Property acquired or improved with Investment Assistance” with “Project Property” for consistency with the proposed defined term at § 314.1 and its usage throughout part 314. In addition, EDA has removed the portions of paragraph (a) that provide background on EDA’s historical practice for establishing the Estimated Useful Life of specific Projects. Although this historical language provided useful background, it is not necessary for the regulation. It is accurate that since 1999, EDA has typically established useful lives of between 15 and 20 years, depending on the nature of the asset. As EDA noted in the 2011 NPRM, the Economic Development Administration and Appalachian Regional Development Reform Act of 1998 (Pub. L. 105–393) added section 601(d) to PWEDA (42 U.S.C. 3211(d)) to allow EDA to release its interest in Real or Personal Property after 20 years. This amendment was designed to provide EDA with additional flexibilities to release its interest in Project Property, particularly as some Projects implicated 40-year Estimated Useful Lives, not to mandate a minimum 20-year useful life for all Project Property. Although these regulatory provisions provided useful

background, they were not necessary for the regulation and we believe maintaining this history in the preamble is sufficient. Accordingly, EDA has removed the concluding clause of the second sentence and the third sentence of paragraph (a) and combined the first and second sentence of the paragraph to read “As provided in § 314.2 of this chapter, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award.” EDA has also simplified the final sentence in paragraph (a), replacing the phrase “govern the manner of obtaining” with the word “obtain” and adding the phrase “in Project Property” at the end of the sentence following the phrase “of the Federal Interest”.

- In § 314.10(b), which sets forth EDA’s procedures for releasing the Federal Interest after the expiration of the Estimated Useful Life, EDA has revised the paragraph heading to read “*Release of the Federal Interest*” instead of “*Release of Property*” to more accurately reflect the content of the provision, corrected a typo in the second sentence by adding the word “the” between “in writing by” and “Recipient”, and added a sentence to the end of the paragraph that provides a helpful cross reference to § 314.10(e), which lays out the limitations and covenants of use that are applicable to any release of the Federal Interest.

- In § 314.10(c), which outlines EDA’s procedures for releasing the Federal Interest before the expiration of the Estimated Useful Life, which release requires compensation of the Federal Interest, EDA has corrected a typo in the paragraph heading by adding the word “the” between “prior to” and “expiration”. In addition, as more fully explained in the description of revisions to paragraph (e) below, EDA has added a clause to clarify that when EDA releases the Federal Interest after receiving compensation for such interest, EDA has no further interest in the property, except for specific nondiscrimination requirements. Accordingly, EDA has added a concluding clause to the final sentence of the paragraph to read “and thereafter will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.”

- Paragraph (d) of § 314.10 sets out EDA’s procedures for releasing the Federal Interest before the expiration of the Estimated Useful Life, but at least 20 years after the award of Investment Assistance, as authorized under section

601(d)(2) of PWEDA. This authority is generally applicable when the Estimated Useful Life is long (*i.e.*, 30 or 40 years) and when the Recipient has complied with all terms of the award of Investment Assistance and the economic development benefits of the award have been achieved. To clarify the intent of this paragraph, EDA has revised the heading to read “*Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance*”. EDA has made additional clarifying changes throughout the paragraph. In the first sentence of the paragraph, EDA is replacing the phrase “that exceeds 20 years” with “, but where 20 years have elapsed since the award of Investment Assistance”. In addition, EDA has clarified that in order to release the Federal interest in such a situation, EDA must determine that the Recipient has made a good faith effort to fulfill all terms and conditions of the award of Investment Assistance; and that the economic development benefits as set out in the award of Investment Assistance have been achieved. As with paragraph (b), EDA has added a sentence to the end of this paragraph that provides a necessary cross reference to § 314.10(e), which sets out the limitations and covenants of use that are applicable to any release of the Federal Interest.

• Finally, in paragraph (e), EDA is making needed corrections and clarifications to limitations of use and required covenants applicable to a release of the Federal Interest. When EDA releases its interest at the expiration of the Estimated Useful Life under § 314.10(b) or releases its interest before the expiration of the Estimated Useful Life, but after at least 20 years have elapsed since the award of Investment Assistance under § 314.10(d), two use limitations on Project Property survive the release: (1) Such Property may not be used for explicitly religious purposes; and (2) such Property may not be used in violation of the nondiscrimination requirements set out in § 302.20. However, in the above two scenarios, if compensation is made to EDA of the Federal Interest at the time of the release or anytime thereafter, the requirement that Project Property not be used for explicitly religious purposes will be extinguished. Similarly, when EDA releases the Federal Interest before the expiration of the Estimated Useful Life and upon compensation of the Federal Interest, the requirement that Project Property not be used for explicitly

religious purposes no longer remains. Note that while § 314.10 currently makes references to “inherently religious purposes,” EDA has changed these references to “explicitly religious purposes” to be consistent with recent rulemakings by nine other Federal agencies implementing Executive Order 13559. *See, e.g.*, 28 CFR 38.5(a) (Department of Justice); 81 FR 19358–59. The term “explicitly religious activities” clarifies that the prohibition is against external, observable activities, and not directed against the religious motivation an entity may have in providing services.

• EDA has made revisions to paragraphs (e)(2) and (3) to make the points above as clear as possible. Specifically, EDA has added a final sentence to paragraph (e)(2) clarifying that when requesting release of the Federal Interest, the Recipient must disclose the future intended use of the Real Property. New paragraph (e)(2)(i) clarifies that a Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities will be required to execute and record a covenant prohibiting use of the Real Property for explicitly religious activities. New paragraph (e)(2)(ii) clarifies the requirements for a Recipient that intends or foresees the use of Real Property or tangible Personal Property for explicitly religious activities. In this case, EDA may require the Recipient to compensate the agency for the Federal Interest to obtain a release and resulting waiver of the “explicitly religious activities” prohibition, and recommends that any such Recipient contact EDA well in advance of requesting a release. It is important to recognize that the structure now in place—payment of the Federal Interest excusing the Recipient from having to comply with the religious use prohibition but not excusing continued compliance with the non-discrimination prohibition—was actually in place before EDA’s January 2015 Final Rule became effective on January 20, 2015. As became clear in the past year when the agency was confronted with several situations involving the religious use prohibition, the January 2015 Final Rule appears to have inadvertently amended certain language in § 314.10 that created ambiguity and unintended consequences that necessitates these changes. Paragraph (e)(3) is being revised so that it specifies the requirement that Real Property or tangible Personal Property not be used in violation of the nondiscrimination requirements of § 302.20. Therefore, EDA has added the clause “, including

a release upon a Recipient’s compensation for the Federal Share” between “under this section” and “a Recipient must” in the first sentence of paragraph (e)(3). In addition, where paragraph (e)(3) specifies the requirements for avoiding any discriminatory use of Project Property, EDA has removed two instances of the phrase “for inherently religious activities prohibited by applicable Federal law and” from the first and second sentences. EDA emphasizes that the differing treatments of the religious use covenant and non-discrimination covenant, which has been part of EDA’s regulatory framework for a number of years, is in our view justified by the fact that different legal authorities control the agency’s obligations in each situation.

Part 315—Trade Adjustment Assistance for Firms

EDA has made no revisions to part 315.

Classification

Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Orders No. 12866, 13563, and 13771

This final rule was drafted in accordance with Executive Orders 12866, 13563, and 13771. It was reviewed by the Office of Management and Budget (“OMB”), which found the final rule to be “significant” as defined by Executive Orders 12866 and 13563. Accordingly, the final rule has undergone interagency review.

This final rule lessens the costs to RLF Recipients to comply with EDA RLF regulations, as discussed further below. It is therefore a “deregulatory action” pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771.

Further, as EDA has determined that this final rule will result in reduced costs, it may be used to offset other regulations consistent with the provisions of Executive Order 13771, which requires that incremental costs associated with a new regulation be

offset by a commensurate reduction in existing regulatory costs. This action results in an overall annual cost reduction of \$961,673 after calculating the costs of revisions to four cost categories. First, because under the final rule RLF Recipients will need to submit fewer reports to EDA each year, and those reports will be easier to complete and review using a revised form, RLF reporting costs are projected to decrease by \$518,956 annually. Note that by including the cost reduction associated with a form revision in this deregulatory action, EDA will not claim a separate offset in the separate Paperwork Reduction Act notice that solicits public comment on the revised form (Form ED-209). Second, EDA projects that it will cost an additional \$520,000 per year for RLF Recipients to conduct required audits. Third, RLF Recipient compliance costs are projected to fall by \$430,068 annually because the risk-based oversight framework will address RLF compliance issues earlier and more efficiently. Fourth, EDA oversight and monitoring costs will fall by \$532,650 per year due to the expected reduction in required oversight caused by the transition to a risk-based framework that will identify RLF issues earlier and allow them to be resolved more efficiently. The net present value of such costs for a five-year period is

\$4,578,544 if a discount rate of three percent is applied and \$4,092,989 if a discount rate of seven percent is applied; both calculations are conducted pursuant to OMB Circular A-4, Regulatory Analysis (Sept. 17, 2003).

Congressional Review Act

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” It has been determined that this final rule does not contain policies that have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this rule. These collections of information are necessary for the proper performance and functions of EDA. The final rule does not include a new information collection requirement and will, thus, use the previously approved ED-209 form to collect information relevant to the grant performance. Nevertheless, EDA is proceeding simultaneously to seek public comments to and OMB approval of updates to the ED-209 to reflect the changes made in this final rule.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this rule. These collections of information are necessary for the proper performance and functions of EDA. The final rule does not include a new information collection requirement and will, thus, use the previously approved ED-209 form to collect information relevant to the grant performance. Nevertheless, EDA is proceeding simultaneously to seek public comments to and OMB approval of updates to the ED-209 to reflect the changes made in this final rule.

Part or section of this final rule	Nature of request	Form/title/OMB control number
307.14(a)	All RLF Recipients must submit reports to EDA in a format designated by EDA	ED-209, RLF Report (0610-0095).
307.14(b)	All Recipients must certify as part of the report that the RLF is operating in accordance with the RLF Plan and that the information provided is complete and accurate.	ED-209, RLF Report (0610-0095).

List of Subjects

13 CFR Part 300

Distressed region, Financial assistance, Headquarters, Regional offices.

13 CFR Part 301

Applicant and application requirements, Economic distress levels, Eligibility requirements, Grant administration, Grant programs, Investment rates.

13 CFR Part 302

Civil rights, Conflicts-of-interest, Environmental review, Federal policy and procedures, Fees, Intergovernmental review, Post-approval requirements, Pre-approval requirements, Project administration, Reporting and audit requirements.

13 CFR Part 303

Award and application requirements, Comprehensive economic development strategy, Planning, Short-term planning investments, State plans.

13 CFR Part 304

District modification and termination, Economic development district, Organizational requirements, Performance evaluations.

13 CFR Part 305

Award and application requirements, Economic development, Public works, Requirements for approved projects.

13 CFR Part 307

Award and application requirements, Economic adjustment assistance, Income, Liquidation, Merger, Revolving loan fund, Pre-loan requirements, Reporting and recordkeeping

requirements, Sales and securitizations, Termination.

13 CFR Part 309

Redistributions of investment assistance, Subgrants, Subrecipients.

13 CFR Part 314

Authorized use, Federal interest, Federal share, Property, Property interest, Release, Title.

Regulatory Text

For the reasons discussed above, EDA amends 13 CFR chapter III as follows:

PART 300—GENERAL INFORMATION

- 1. Revise the authority citation of part 300 to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; 15 U.S.C. 3701; Department of Commerce Organization Order 10-4.

- 2. Amend § 300.3 by:

- a. Adding a definition for *Co-Recipient* in alphabetical order;
- b. Revising the definitions of *In-Kind Contribution(s)* and *Project*; and
- c. Adding definitions for *Stevenson-Wydler* and *Subrecipient* in alphabetical order.

The revisions and additions read as follows:

§ 300.3 Definitions.

* * * * *

Co-Recipient means one of multiple Recipients awarded Investment Assistance under a single award. Unless otherwise provided in the terms and conditions of the Investment Assistance, each Co-Recipient is jointly and severally liable for fulfilling the terms of the Investment Assistance.

* * * * *

In-Kind Contribution(s) means non-cash contributions, which may include contributions of space, equipment, services and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal uniform administrative requirements and cost principles as set out in 2 CFR part 200.

* * * * *

Project means the proposed or authorized activity (or activities) the purpose of which fulfills EDA's mission and program requirements as set forth in PWEDA or Stevenson-Wydler and this chapter and which may be funded in whole or in part by EDA Investment Assistance.

* * * * *

Stevenson-Wydler, for purposes of EDA, means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*).

Subrecipient means an Eligible Recipient that receives a redistribution of Investment Assistance in the form of a subgrant, under part 309 of this chapter, from another Eligible Recipient to carry out part of a Federal program.

* * * * *

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

- 3. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

- 4. Revise paragraph (b) of § 301.2 to read as follows:

§ 301.2 Applicant eligibility.

* * * * *

(b) An Eligible Applicant that is a non-profit organization must include in

its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA, at its sole discretion, may waive this cooperation requirement for certain Projects of a significant Regional or national scope under part 306 or 307 of this chapter. See §§ 306.3(b), 306.6(b), and 307.5(b) of this chapter.

- 5. Revise § 301.5 to read as follows:

§ 301.5 Matching share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must provide documentation to EDA demonstrating that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance. EDA shall determine at its sole discretion whether the Matching Share documentation adequately addresses the requirements of this section.

- 6. Revise paragraph (a) of § 301.7 to read as follows:

§ 301.7 Investment Assistance application.

(a) For all EDA Investment Assistance programs, including the Public Works, Economic Adjustment Assistance, Planning, Local Technical Assistance, Research and National Technical Assistance, and University Center programs, EDA will publish an FFO that specifies application submission requirements and evaluation procedures and criteria. Each FFO will be published on the EDA Web site and at <http://www.grants.gov>. All forms required for EDA Investment Assistance may be obtained electronically from <http://www.grants.gov> or from the appropriate regional office.

* * * * *

- 7. Revise § 301.8 to read as follows:

§ 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA's statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the Eligible Applicant to implement the proposed Project. EDA will also review applications for conformance with

program-specific evaluation criteria set out in the applicable FFO.

- 8. Revise the introductory text of paragraph (a) of § 301.11 to read as follows:

§ 301.11 Infrastructure.

(a) EDA will fund both construction and non-construction infrastructure necessary to meet a Region's strategic economic development goals and needs, which in turn results in job creation. This includes infrastructure used to develop basic economic development assets as described in §§ 305.1 and 305.2 of this chapter (e.g., roads, sewers, and water lines), as well as infrastructure that supports innovation and entrepreneurship. The following are examples of innovation and entrepreneurship-related infrastructure that support job creation:

* * * * *

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

- 9. Revise the authority citation of part 302 to read as follows:

Authority: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10–4.

- 10. Revise § 302.5 to read as follows:

§ 302.5 Relocation assistance and land acquisition policies.

Recipients of EDA Investment Assistance or any other types of assistance under PWEDA, the Trade Act, and Stevenson-Wydler (States and political subdivisions of States and non-profit organizations, as applicable) are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646; 42 U.S.C. 4601 *et seq.*). See 15 CFR part 11 and 49 CFR part 24 for specific compliance requirements.

- 11. Revise § 302.6 to read as follows:

§ 302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- 12. Revise paragraphs (a) introductory text, (a)(2), and (d) of § 302.20 to read as follows:

§ 302.20 Civil rights.

(a) Discrimination is prohibited by a Recipient or Other Party (as defined in paragraph (b) of this section) with respect to a Project receiving Investment Assistance under PWEDA or Stevenson-Wydler or by an entity receiving Adjustment Assistance (as defined in § 315.2 of this chapter) under the Trade Act or any other type of assistance under Stevenson-Wydler, in accordance with the following authorities:

* * * * *

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA), 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*) (proscribing discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution), and the Department's implementing regulations found at 15 CFR part 8a;

* * * * *

(d) All Recipients of Investment Assistance under PWEDA and Stevenson-Wydler, all Other Parties, and all entities receiving Adjustment Assistance under the Trade Act or any other type of assistance under Stevenson-Wydler must submit to EDA written assurances that they will comply with applicable laws, EDA regulations, Department regulations, and such other requirements as may be applicable, prohibiting discrimination.

* * * * *

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

■ 13. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 14. Revise paragraphs (b)(1) and (b)(3)(ii) of § 303.6 to read as follows:

§ 303.6 Partnership Planning and the EDA-funded CEDS process.

* * * * *

(b) * * *

(1) *CEDS Strategy Committee.* The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region, which may include Indian tribes, the private sector, State and other public officials, community leaders, private individuals,

representatives of workforce development boards, institutions of higher education, minority and labor groups, and others who can contribute to and benefit from improved economic development in the relevant Region. In addition, the Strategy Committee must demonstrate the capacity to undertake a collaborative and effective planning process.

* * * * *

(3) * * *

(ii) The Planning Organization must submit a new or revised CEDS to EDA at least every five years, unless EDA or the Planning Organization determines that a new or revised CEDS is required earlier due to changed circumstances. In connection with the submission of a new or revised CEDS, the Planning Organization shall use its best efforts to obtain renewed commitments from participating counties or other areas within the District to support the economic development activities of the District. Provided the Planning Organization can document a good faith effort to obtain renewed commitments, the inability to secure renewed commitments shall not disqualify a CEDS update.

* * * * *

■ 15. Revise paragraph (c)(1) of § 303.7 to read as follows:

§ 303.7 Requirements for Comprehensive Economic Development Strategies.

* * * * *

(c) * * *

(1) In determining the acceptability of a CEDS prepared independently of EDA Investment Assistance or oversight for Projects under parts 305 and 307 of this chapter, EDA may in its discretion determine that the CEDS is acceptable so long as it includes all of the elements listed in paragraph (b) of this section. In certain circumstances, EDA may accept a non-EDA funded CEDS that does not contain all the elements listed in paragraph (b) of this section. In doing so, EDA shall consider the circumstances surrounding the application for Investment Assistance, including emergencies or natural disasters and the fulfillment of the requirements of section 302 of PWEDA.

* * * * *

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

■ 16. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

■ 17. Revise paragraph (c)(2) of § 304.2 to read as follows:

§ 304.2 District Organizations: Formation, organizational requirements and operations.

* * * * *

(c) * * *

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, which may include the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. In addition, the governing body must demonstrate the capacity to implement the EDA-approved CEDS.

* * * * *

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

■ 17. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

■ 18. Revise paragraph (b) of § 305.6 to read as follows:

§ 305.6 Allowable methods of procurement for construction services.

* * * * *

(b) For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 CFR part 200.

■ 19. Revise paragraph (c) of § 305.8 to read as follows:

§ 305.8 Recipient-furnished equipment and materials.

* * * * *

(c) Acquisition of Recipient-furnished equipment or materials under this section also is subject to the requirements of 2 CFR part 200.

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

■ 20. The authority citation of part 307 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

■ 21. Revise § 307.6 to read as follows:

§ 307.6 Revolving Loan Funds established for lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending,

but also may fund public infrastructure or other authorized lending activities. The requirements in this subpart apply to EDA-funded RLFs. Special award conditions may contain appropriate modifications of these requirements.

■ 22. Revise paragraphs (b) introductory text and (b)(2) of § 307.7 to read as follows:

§ 307.7 Revolving Loan Fund award requirements.

* * * * *

(b) RLF Grants shall comply with the requirements set forth in this part, as well as relevant provisions of parts 300 through 303, 305, and 314 of this chapter and in the following publications:

* * * * *

(2) The Compliance Supplement, which is appendix XI to 2 CFR part 200 and is available on the OMB Web site at https://www.whitehouse.gov/omb/circulars_default.

■ 23. Amend § 307.8 as follows:

■ a. Add definitions for *Allowable Cash Percentage* and *Disbursement Phase* in alphabetical order;

■ b. Revise the definitions of *Recapitalization Grants* and *Reporting Period*;

■ c. Add a definition for *Risk Analysis System* in alphabetical order;

■ d. Remove the definition of *RLF Capital*;

■ e. Add definitions for *RLF Capital Base* and *RLF Cash Available for Lending* in alphabetical order;

■ f. Revise the definition of *RLF Income*; and

■ g. Add definitions for *RLF Recipient* and *Voluntarily Contributed Capital* in alphabetical order.

The additions and revisions read as follows:

§ 307.8 Definitions.

* * * * *

Allowable Cash Percentage means the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in each EDA regional office's portfolio of RLF Grants over the previous year.

* * * * *

Disbursement Phase means the period of loan activity where Grant funds awarded have not been fully disbursed to the RLF Recipient.

* * * * *

Recapitalization Grants are Investments of additional Grant funds to increase the RLF Capital Base.

Reporting Period, for purposes of this subpart only, is based on the RLF Recipient's fiscal year end and is on an

annual or semi-annual basis as determined by EDA.

* * * * *

Risk Analysis System refers to a set of measures defined by EDA to evaluate a Recipient's administration of its RLF Grant and that may include but is not limited to capital, assets, management, earnings, liquidity, strategic results, and financial controls.

RLF Capital Base means the total value of RLF Grant assets administered by the RLF Recipient. It is equal to the amount of Grant funds used to capitalize (and recapitalize, if applicable), the RLF, plus Local Share, plus RLF Income less any eligible and reasonable administrative expenses, plus Voluntarily Contributed Capital, less any loan losses and disallowances. Except as used to pay for eligible and reasonable administrative costs associated with the RLF's operations, the RLF Capital Base is maintained in two forms at all times: As RLF Cash Available for Lending and as outstanding loan principal.

RLF Cash Available for Lending means the portion of the RLF Capital Base that is held as cash and available to make loans. This excludes loans that have been committed or approved but have not yet been funded.

RLF Income means interest earned on outstanding loan principal and RLF accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to generally accepted accounting principles (GAAP) and § 307.20(h).

RLF Recipient means the Eligible Recipient that receives an RLF Grant to manage an RLF in accordance with an RLF Plan, Prudent Lending Practices, the terms and conditions of the RLF Grant, and all applicable policies, laws, and regulations.

* * * * *

Voluntary Contributed Capital means an RLF Recipient's voluntary infusion of additional non-EDA funds into the RLF Capital Base that is separate from and exceeds any Local Share that is required as a condition of the RLF Grant. Voluntary Contributed Capital is an irrevocable addition to the RLF Capital Base and must be administered in

accordance with EDA regulations and policies.

■ 24. Revise the section heading and paragraphs (a), (c), (d), and (f)(2) and add paragraphs (g) and (h) to § 307.11 to read as follows:

§ 307.11 Pre-disbursement requirements and disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.* (1) Within 60 calendar days before the initial disbursement of EDA funds, the RLF Recipient must provide the following in a form acceptable to EDA:

(i) Certification from the RLF Recipient that the Recipient's accounting system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations.

(ii) The RLF Recipient's certification that standard RLF loan documents reasonably necessary or advisable for lending are in place and a certification from the RLF Recipient's legal counsel that the loan documents are adequate and comply with the terms and conditions of the RLF Grant, RLF Plan, and applicable State and local law. The standard loan documents must include, at a minimum, the following:

(A) Loan application;
(B) Loan agreement;
(C) Board of directors' meeting minutes approving the RLF loan;
(D) Promissory note;
(E) Security agreement(s);
(F) Deed of trust or mortgage (as applicable);
(G) Agreement of prior lien holder (as applicable); and
(H) Evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

(iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Grant award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the maximum loan amount allowed for in the EDA-approved RLF Plan.

(2) The RLF Recipient is required to maintain the adequacy of the RLF's accounting system and maintain and update standard RLF loan documents at all times during the duration of the RLF's operation. In addition, the RLF recipient must maintain sufficient fidelity bond coverage as described in this subsection for the duration of the RLF's operation. The RLF Recipient shall maintain records and documentation to demonstrate the requirements set out in this paragraph (a) are maintained for the duration of

the RLF's operation. *See also* § 307.13(b)(3).

* * * * *

(c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall be the amount required to meet the Federal share requirement of a new RLF loan. RLF Income held during the disbursement phase may be used to reimburse eligible administrative costs. RLF Income earned and principal repaid during the Disbursement Phase must be placed in the RLF Capital Base and may be used to reimburse eligible and reasonable administrative costs, provide the requirements of § 307.12(a) and (b) are met, and increase the RLF Capital Base. RLF Income earned and principal repaid during the Disbursement Phase is not required to be used for new RLF loans, unless otherwise specified in the terms and conditions of an RLF Grant.

(d) *Interest-bearing account.* All Grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account by the Recipient until an RLF loan is made to a borrower.

* * * * *

(f) * * *

(2) When an RLF has a combination of In-Kind Contributions, which must be specifically authorized in the terms and conditions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs, and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last 20 percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

(g) *Loan closing and disbursement schedule.* (1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the RLF Grant within three years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within 45 days of the deadline;

(ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or
(iii) EDA has approved a time schedule extension pursuant to paragraph (h) of this section.

(h) *Time schedule extensions.* (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension request by demonstrating that:

(i) The delay was unforeseen or beyond the control of the RLF Recipient;

(ii) The financial need for the RLF still exists;

(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension. In the event an extension is denied, EDA may de-obligate all or part of the unused Grant funds and terminate the Grant.

■ 25. Revise the section heading, paragraphs (a) and (b), and the heading and introductory text of paragraph (c) and add paragraph (d) to § 307.12 to read as follows:

§ 307.12 Revolving Loan Fund Income requirements during the Revolving Phase; payments on defaulted and written off Revolving Loan Fund loans; Voluntarily Contributed Capital.

(a) *Revolving Loan Fund Income requirements during the Revolving Phase.* During the Revolving Phase, RLF Income must be placed into the RLF Capital Base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income is earned and the administrative costs are accrued in the same fiscal year of the RLF Recipient;

(2) RLF Income earned, but not used for administrative costs during the same fiscal year of the RLF Recipient is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital Base in a subsequent fiscal year for any purpose other than lending without the prior written consent of EDA; and

(4) An RLF Recipient shall not use funds in excess of RLF Income for administrative costs unless directed otherwise in writing by EDA. In accordance with EDA's RLF Risk Analysis System, RLF Recipients are expected to keep administrative costs to a minimum in order to maintain the RLF Capital Base. The percentage of RLF Income used for administrative expenses will be one of the measures used in EDA's RLF Risk Analysis System to evaluate RLF Recipients. *See also* § 307.16.

(b) *Compliance guidance.* When charging costs against RLF Income, RLF Recipients must comply with applicable Federal uniform administrative requirements, cost principles, and audit requirements as detailed in this paragraph (b) and in the terms and conditions of the RLF Grant.

(1) *For RLF Grants made on or after December 26, 2014.* For RLFs awarded on or after December 26, 2014 or for RLFs that have received one or more Recapitalization Grants on or after December 26, 2014, the RLF Recipient must comply with the administrative and cost principles in 2 CFR part 200 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards").

(2) *For RLF Grants made before December 26, 2014.* For RLFs awarded before December 26, 2014, unless otherwise indicated in the terms of the Grant, the RLF Recipient must comply with the following cost principles:

(i) 2 CFR part 225 (OMB Circular A-87 for State, local, and Indian tribal governments),

(ii) 2 CFR part 230 (OMB Circular A-122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A-122 as not subject to such Circular), and

(iii) 2 CFR part 220 (OMB Circular A-21 for educational institutions).

(3) *For all RLF Grants.* For all RLF Grants, regardless of when they were awarded, the audit requirements set out as subpart F to 2 CFR part 200 apply to audits of the RLF Recipient's fiscal years beginning on or after December 26, 2014. In addition, the Compliance Supplement, which is appendix XI to 2 CFR part 200, applies as appropriate.

(c) *Priority of payments on defaulted and written off RLF loans.* When an RLF Recipient receives proceeds on a defaulted or written off RLF loan that is not subject to liquidation pursuant to § 307.21, such proceeds shall be applied in the following order of priority:

* * * * *

(d) *Voluntarily Contributed Capital.* An RLF Recipient that wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend must submit a written request that specifies the source of the funds to be added. Once an RLF Recipient elects to commit Voluntarily Contributed Capital and upon approval by EDA, the Voluntarily Contributed Capital becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF.

■ 26. Amend § 307.13 as follows:

■ a. Revise paragraph (b)(2);

■ b. Redesignate paragraph (b)(3) as paragraph (b)(4); and

■ c. Add new paragraph (b)(3).

The revision and addition read as follows:

§ 307.13 Records and retention.

* * * * *

(b) * * *

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.

(3) Consistent with § 307.11(a), for the duration of RLF operations, maintain records to demonstrate:

(i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations;

(ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place; and

(iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF.

■ 27. Revise § 307.14 to read as follows:

§ 307.14 Revolving Loan Fund report.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit an RLF report, using Form ED-209, in a format and at a frequency as required by EDA.

(b) *Report contents.* RLF Recipients must certify as part of the RLF report to EDA that the RLF is operating in accordance with the applicable RLF Plan and that the information provided is complete and accurate.

■ 28. Amend § 307.15 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b);

■ c. Redesignate paragraphs (c) through (e) as paragraphs (b) through (d), respectively; and

■ d. Revise the heading of newly redesignated paragraph (c) and paragraph (c)(1).

The revisions read as follows:

§ 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs shall operate in accordance with generally accepted accounting principles ("GAAP") as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the adjusted current value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and is represented by a non-cash entry. However, loan loss reserves shall not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards ("SEFA") required as part of the RLF Recipient's audit requirements under 2 CFR part 200.

* * * * *

(c) *RLF leveraging.* (1) RLF loans must leverage additional investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities;

(iii) The non-guaranteed portions and 90 percent of the guaranteed portions of any Federal loan; or

(iv) Loans from other State and local lending programs.

■ 29. Revise § 307.16 to read as follows:

§ 307.16 Risk Analysis System.

(a) EDA shall evaluate and manage RLF recipients using a Risk Analysis System that will focus on such risk factors as: capital, assets, management, earnings, liquidity, strategic results, and financial controls. Risk analysis ratings of each RLF Recipient's RLF program shall be conducted at least annually and will be based on the most recently submitted Form ED-209 RLF report.

(b) An RLF Recipient generally will be allowed a reasonable period of time to achieve compliance with risk factors as defined by EDA. However, persistent

noncompliance with these factors and their limits as identified through EDA's Risk Analysis System over multiple Reporting Periods may result in EDA taking appropriate remedies for noncompliance as detailed in § 307.21.

■ 30. Revise § 307.17 to read as follows:

§ 307.17 Requirements for Revolving Loan Fund Cash Available for Lending.

(a) *General.* RLF Cash Available for Lending shall be deposited and held in an interest-bearing account by the Recipient and used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Allowable Cash Percentage.* EDA shall notify each RLF recipient by January 1 of each year of the Allowable Cash Percentage that is applicable to lending during the Recipient's ensuing fiscal year. During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules so that at all times they do not exceed the Allowable Cash Percentage.

(c) *Restrictions on use of RLF Cash Available for Lending.* RLF Cash Available for Lending shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal Agency's loan programs;

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of

loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Cash Available for Lending will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.

(7) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval;

(8) Support operations or administration of the RLF Recipient; or

(9) Undertake any activity that would violate the requirements found in part 314 of this chapter, including § 314.3 ("Authorized Use of Property") and § 314.4 ("Unauthorized Use of Property").

■ 31. Revise paragraphs (a)(1) introductory text, (a)(2), (b)(1) introductory text, (b)(1)(i), and (b)(2)(i) of § 307.18 to read as follows:

§ 307.18 Addition of lending areas; consolidation and merger of RLFs.

(a)(1) An RLF Recipient shall make loans only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the RLF Plan. An RLF Recipient may add a lending area (an "Additional Lending Area") to its existing lending area to create a new lending area (the "New Lending Area") only with EDA's prior written approval and subject to the following provisions and conditions:

* * * * *

(2) Following EDA approval, the New Lending Area designation shall remain in place until EDA approves a subsequent request for a New Lending Area.

(b) * * *

(1) *Single RLF Recipient.* An RLF Recipient with more than one EDA-funded RLF Grant may consolidate two or more EDA-funded RLFs into one combined RLF with EDA's prior written approval and provided:

(i) It is up-to-date with all reports in accordance with § 307.14;

* * * * *

(2) * * *

(i) The replacement RLF Recipient is up-to-date with all reports in accordance with § 307.14;

* * * * *

■ 32. Revise § 307.20 to read as follows:

§ 307.20 Noncompliance.

EDA will take appropriate compliance actions as detailed in § 307.21 for the RLF Recipient's failure to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, including but not limited to:

(a) Failing to obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;

(b) Failing to submit an updated RLF Plan to EDA in accordance with § 307.9(c);

(c) Failing to submit timely progress, financial, and audit reports in the format required by the RLF Grant and § 307.14, including the Form ED-209 RLF report;

(d) Failing to manage the RLF Grant in accordance with Prudent Lending Practices, as defined in § 307.8;

(e) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or other extenuating circumstances;

(f) Making an ineligible loan;

(g) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant;

(h) Failing to sequester funds or remit the interest on EDA's portion of the sequestered funds to the U.S. Treasury, as directed by EDA;

(i) Failing to comply with the audit requirements set forth in subpart F to 2 CFR part 200 and the related Compliance Supplement, including reference to the correctly valued EDA RLF Federal expenditures in the SEFA, timely submission of audit reports to the Federal Audit Clearinghouse, and the inclusion of the RLF program as an appropriately audited program;

(j) Failing to implement timely resolutions to audit findings or questioned costs contained in the annual audit, as applicable;

(k) Failing to comply with an EDA-approved corrective action plan to remedy persistent noncompliance with RLF-related findings;

(l) Failing to comply with the conflicts of interest provisions set forth in § 302.17; and

(m) Making unauthorized use of RLF Cash Available for Lending in violation of § 307.18(c).

■ 33. Revise § 307.21 to read as follows:

§ 307.21 Remedies for noncompliance.

(a) *General.* If an RLF Recipient fails to operate the RLF in accordance with the RLF Plan, the terms and conditions of the RLF Grant, or this subpart, as

detailed in § 307.20, EDA may require one or more of the following actions, as appropriate in the circumstances:

(1) Increased reporting requirements;

(2) Implementation of a corrective action plan;

(3) A special audit;

(4) Sequestration of RLF funds;

(5) Repayment of ineligible loans or other costs to the RLF;

(6) Transfer or merger of the RLF in accordance with § 307.18;

(7) Suspension of the RLF Grant; or

(8) Termination of the RLF Grant, in whole or in part.

(b) *Disallowance of a portion of an RLF Grant, liquidation.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include the RLF Recipient:

(1) Holding RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request;

(2) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(3) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to the disallowance.

(c) *Termination or suspension.* To maintain effective control over and accountability of RLF Grant funds and assets, EDA shall determine the manner and timing of any suspension or termination action. EDA may require the RLF Recipient to repay the Federal Share in a lump-sum payment or enter into a Sale, or EDA may agree to enter into a repayment agreement with the RLF Recipient for repayment of the Federal Share.

(d) *Termination, liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA must make all efforts to recover the pro rata Federal Share (as defined in § 314.5 of this chapter). EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation. The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (d)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(e) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(1) *First*, for any third party liquidation costs;

(2) *Second*, for the payment of EDA's Federal Share; and

(3) *Third*, if any proceeds remain, to the RLF Recipient.

(f) *RLF Recipient's request to terminate.* EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal Government for the pro rata Federal Share of the RLF Capital Base.

(g) *Distribution of proceeds upon termination.* Upon termination, distribution of proceeds shall occur in accordance with § 307.21(e).

PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

■ 34. The authority citation of part 309 continues to read as follows:

Authority: 42 U.S.C. 3154c; 42 U.S.C. 3211; Department of Commerce Delegation Order 10–4.

■ 35. Revise paragraph (a) of § 309.1 to read as follows:

§ 309.1 Redistributions under parts 303, 305 and 306.

(a) *General.* Except as provided in paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient, generally referred to as a Subrecipient, that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible

Recipient under the original Investment award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

* * * * *

■ 36. Revise paragraphs (a)(1) and (b) of § 309.2 to read as follows:

§ 309.2 Redistributions under part 307.

(a) * * *

(1) A subgrant to another Eligible Recipient, generally referred to a Subrecipient, that qualifies for Investment Assistance under part 307 of this chapter; or

* * * * *

(b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter. EDA may require the Eligible Recipient under the original Investment Award to agree to special award conditions and the Subrecipient to provide appropriate certifications to ensure the Subrecipient's compliance with legal requirements.

PART 314—PROPERTY

■ 37. The authority citation for part 314 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 38. Amend § 314.1 as follows:

■ a. Revise the definition of *Personal Property*;

■ b. Add the definition of *Project Property* in alphabetical order; and

■ c. Revise the definition of *Real Property*.

The revisions and addition read as follows:

§ 314.1 Definitions.

* * * * *

Personal Property means all tangible and intangible property other than Real Property, including the RLF Capital Base as defined at § 307.8.

Project Property means all Property that is acquired or improved, in whole or in part, with Investment Assistance and is required, as determined by EDA, for the successful completion and operation of a Project and/or serves as the economic justification of a Project. As appropriate to specify the type of Property referenced, this part refers to Project Property as “Project Real Property” or “Project Personal Property”.

* * * * *

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is served by the construction of Project infrastructure (such as roads, sewers and water lines) where the infrastructure contributes to the value of such land as a specific purpose of the Project.

* * * * *

■ 39. Revise § 314.2 to read as follows:

§ 314.2 Federal Interest.

(a) Subject to the obligations and conditions set forth in this part and in relevant provisions of 2 CFR part 200, Project Property vests upon acquisition in the Recipient (or, if approved by EDA, in a Co-recipient or Subrecipient). Project Property shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the “Federal Interest”). The Federal Interest ensures compliance with EDA Project requirements, including those related to the purpose, scope, and use of a Project. The Recipient typically must secure the Federal Interest through a recorded lien, statement, or other recordable instrument setting forth EDA's Property interest in a Project (e.g., a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction, or improvement of a building. See § 314.8.).

(b) When the Federal Government is fully compensated for the Federal Share of Project Property, the Federal Interest is extinguished and the Federal Government has no further interest in the Property, except as provided in § 314.10(e)(3) regarding nondiscrimination requirements.

■ 40. Revise § 314.3 to read as follows.

§ 314.3 Authorized use of Project Property.

(a) *General.* During the Estimated Useful Life of the Project, the Recipient or Owner must use any Project Property only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) *Project Property that is no longer needed for Project purposes.* Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Project Property is longer needed for the original purpose of the Investment Assistance, EDA, in its sole

discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) *Real Property for sale or lease.* Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including nondiscrimination and environmental compliance.

(d) *Property transfers and Successor Recipients.* EDA, in its sole discretion, may approve the transfer of any Project Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.

(e) *Replacement Personal Property.* When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property, provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property.

(f) *Replacement Real Property.* In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(g) *Incidental use of Project Property.* With EDA's prior written approval, a Recipient may undertake an incidental use of Project Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided that the Recipient is in compliance with applicable law and the terms and

conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise undermine the economic purpose for which the Investment was made or adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at <http://www.eda.gov>) for guidelines on obtaining approval for incidental use of Property under this section.

■ 41. Revise the section heading and paragraph (a), add a heading to paragraph (b), and revise paragraphs (b) introductory text and (c) of § 314.4 to read as follows:

§ 314.4 Unauthorized Use of Project Property.

(a) *Compensation of Federal Share upon an Unauthorized Use of Project Property.* Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of the Federal Interest in certain Property), or as otherwise authorized by EDA, the Federal Government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Project Property is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the requirements of 2 CFR part 200, including any supplements, shall apply.

(b) *Additional Unauthorized Uses of Project Property.* Additionally, prior to the release of the Federal Interest, Project Real Property or tangible Project Personal Property may not be used:

* * * * *

(c) *Recovery of the Federal Share.* Where the Disposition, encumbrance, or use of any Project Property violates paragraph (a) or (b) of this section, EDA may assert the Federal Interest in the Project Property to recover the Federal Share for the Federal Government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§ 302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal Government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in § 314.10(d)(3).

■ 42. Revise the introductory text of paragraph (a) of § 314.5 to read as follows:

§ 314.5 Federal Share.

(a) For purposes of this part, "Federal Share" means that portion of the current fair market value of any Project Property attributable to EDA's participation in the Project. EDA may rely on a current certified appraisal of the Project Property prepared by an appraiser licensed in the State where the Project Property is located to determine the fair market value. In extraordinary circumstances and at EDA's sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee. The Federal Share shall be the current fair market value or other valuation as determined by EDA of the Property after deducting:

* * * * *

■ 43. Revise paragraphs (a), (b)(3), (b)(4)(v)(B), (b)(5)(v)(B), and (c) of § 314.6 to read as follows:

§ 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Project Property must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project, so long as the Recipient discloses such an encumbrance in writing as part of its application for Investment Assistance or as soon as practicable after learning of the encumbrance.

(b) * * *

(3) *Pre-existing encumbrances.*

Encumbrances already in place and disclosed to EDA at the time EDA approves the Project where EDA, in its sole discretion, determines that:

(i) The requirements of § 314.7(b) are met;

(ii) Consistent with paragraphs (b)(4)(iv) and (b)(5)(iv) of this section, the terms and conditions of the encumbrance are satisfactory; and

(iii) Consistent with paragraphs (b)(4)(v) and (b)(5)(v) of this section, there is a reasonable expectation that the Recipient will not default on its obligations.

(4) * * *

(v) * * *

(B) A Recipient that is a non-profit organization is financially strong and is an established organization with

sufficient organizational life to demonstrate stability over time;

* * * * *

(5) * * *

(v) * * *

(B) A Recipient that is a non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

* * * * *

(c) *Unauthorized encumbrances.* Encumbering Project Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

■ 44. Revise paragraphs (a), (c) introductory text, (c)(1) introductory text, (c)(1)(ii), (c)(2) introductory text, (c)(4) heading and introductory text, (c)(4)(ii)(B), (c)(4)(iii), and (c)(5)(i) and (iii) of § 314.7 to read as follows:

§ 314.7 Title.

(a) *General title requirement.* Except in those limited circumstances identified in paragraph (c) of this section, at the time Investment Assistance is awarded, the Recipient must hold title to Project Real Property, which, as noted in § 314.1 in the definition of “Real Property” includes land that is served by the construction of Project infrastructure (such as roads, sewers, and water lines) and where the infrastructure contributes to the value of such land as a specific purpose of the Project. The Recipient must maintain title to Project Real Property at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient also must furnish evidence, satisfactory in form and substance to EDA, that title to Project Real Property (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

* * * * *

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to Project Real Property at the time Investment Assistance is awarded and at all times during the Estimated Useful Life of the Project.

(1) *Project Real Property acquisition.* Where the acquisition of Project Real Property is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the

Recipient to purchase the Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal Government's interest in the Project Real Property.

(2) *Leasehold interests.* EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of Project Real Property will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(4) *State or local government owned roadway or highway construction.* When the Project includes construction on a State or local government owned roadway or highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public roadway or highway, provided that:

* * * * *

(ii) * * *

(B) If at any time during the Estimated Useful Life of the Project any or all of the improvements in the Project within the State or local government owned roadway or highway are relocated for any reason pursuant to requirements of the owner of the public roadway or highway, the Recipient shall be responsible for accomplishing such relocation, including expending the Recipient's own funds as necessary, so that the Project continues as authorized by the Investment Assistance; and

(iii) The Recipient obtains all written authorizations (*i.e.*, State or county permit(s)) necessary for the Project to be constructed within the public roadway or highway, copies of which shall be submitted to EDA. Such authorizations shall contain no time limits that EDA determines substantially restrict the use of the public roadway or highway for the Project during the Estimated Useful Life of the Project.

(5) * * *

(i) *General.* At EDA's discretion, when an authorized purpose of the Project is to construct Recipient-owned facilities to serve Recipient or privately owned Project Real Property, including industrial or commercial parks, so that the Recipient or Owner may sell or lease parcels of the Project Real Property to private parties, such ownership, sale, or lease, as applicable, is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Project Real Property, the Recipient or Owner, as applicable, provides evidence

sufficient to EDA that it holds title to the Project Real Property intended for sale or lease prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property in accordance with paragraphs (c)(5)(i)(C) through (E) of this section;

(B) In cases where an authorized purpose of the Project is to lease Project Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Project Real Property intended for lease prior to the disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient provides adequate assurances that the Project and the development of land and improvements on the Recipient or privately owned Project Real Property to be served by or that provides the economic justification for the Project will be completed according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project or of Project Real Property served by the Project or that provides the economic justification for the Project during the Project's Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; and

* * * * *

(iii) *Agreement between Recipient and Owner.* In addition to paragraphs (c)(5)(i) and (ii) of this section, when an authorized purpose of the Project is to construct facilities to serve privately owned Real Property, the Recipient and the Owner must agree to use the Real Property improved or benefitted by the EDA Investment Assistance only for the authorized purposes of the Project and in a manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project.

* * * * *

■ 45. Revise the section heading and paragraphs (a), (b), and (d) of § 314.8 to read as follows:

§ 314.8 Recorded statement for Project Real Property.

(a) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant, or other statement of the Federal Interest in such Project Real Property. The statement shall specify the Estimated Useful Life

of the Project and shall include, but not be limited to, the Disposition, encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of the Federal Interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Project Real Property is located, all in accordance with applicable law.

* * * * *

(d) In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the Federal Interest in Project Real Property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with paragraph (a) of this section is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by the Recipient.

■ 46. Revise § 314.9 to read as follows:

§ 314.9 Recorded statement for Project Personal Property.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall provide notice of the Federal Interest in all Project Personal Property by executing a Uniform Commercial Code Financing Statement (Form UCC-1, as provided by State law) or other statement of the Federal Interest in the Project Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to all Project Personal Property, except as otherwise provided in this part.

■ 47. Revise the section heading and paragraphs (a) through (d), (e)(2), and the introductory text to paragraph (e)(3) of § 314.10 to read as follows:

§ 314.10 Procedures for release of the Federal Interest.

(a) *General.* As provided in § 314.2, the Federal Interest in Project Property extends for the duration of the Estimated Useful Life of the Project, which is determined by EDA at the time of Investment award. Upon request of the Recipient, EDA will release the

Federal Interest in Project Property upon expiration of the Estimated Useful Life as established in the terms and conditions of the Investment Assistance and in accord with the requirements of this section and part. This section provides procedures to obtain a release of the Federal Interest in Project Property.

(b) *Release of the Federal Interest after the expiration of the Estimated Useful Life.* At the expiration of a Project's Estimated Useful Life and upon the written request of a recipient, the Assistant Secretary may release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance. The determination provided for in this paragraph (b) shall be established at the time of Recipient's written request and shall be based, at least in part, on the facts and circumstances provided in writing by the Recipient. For a Project in which a Recorded Statement as provided for in §§ 314.8 and 314.9 has been recorded, EDA will provide for the release by executing an instrument in recordable form. The release will terminate the Investment as of the date of its execution and satisfy the Recorded Statement. See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(c) *Release prior to the expiration of the Estimated Useful Life.* If the Recipient will no longer use the Project Property in accord with the requirements of the terms and conditions of the Investment within the time period of the Estimated Useful Life, EDA will determine if such use by the Recipient constitutes an Unauthorized Use of Property and require compensation for the Federal Interest as provided in § 314.4 and this section. EDA may release the Federal Interest in connection with such Property only upon receipt of full payment in compensation of the Federal Interest and thereafter will have no further interest in the ownership, use, or Disposition of the Property, except for the nondiscrimination requirements set forth in paragraph (e)(3) of this section.

(d) *Release of the Federal Interest before the expiration of the Estimated Useful Life, but 20 years after the award of Investment Assistance.* In accord with section 601(d)(2) of PWEDA, upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, but where 20 years have elapsed since the award of Investment Assistance, EDA may release any Real Property or tangible Personal Property

interest held by EDA, if EDA determines:

(1) The Recipient has made a good faith effort to fulfill all terms and conditions of the award of Investment Assistance; and

(2) The economic development benefits as set out in the award of Investment Assistance have been achieved.

(3) See paragraph (e) of this section for limitations and covenants of use that are applicable to any release of the Federal Interest.

(e) * * *

(2) In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of § 314.3 or § 314.4; and other such factors as EDA deems appropriate. When requesting a release of the Federal Interest pursuant to this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for explicitly religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with § 314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. See § 314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property for explicitly religious activities in violation of applicable Federal law.

(ii) EDA may require a Recipient (or its successors in interest) that intends or foresees the use of Real Property or tangible Personal Property for explicitly religious activities following the release of the Federal Interest to compensate EDA for the Federal Share of such Property. If such compensation is made, no covenant with respect to explicitly religious activities will be required as a condition of the release. EDA recommends that any Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for explicitly religious activities to contact EDA well in

advance of requesting a release pursuant to this section.

(3) Notwithstanding any release of the Federal Interest under this section, including a release upon a Recipient's compensation for the Federal Share, a Recipient must ensure that Project Property is not used in violation of nondiscrimination requirements set forth in § 302.20 of this chapter.

Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

* * * * *

Dated: November 15, 2017.

Dennis Alvord,

Deputy Assistant Secretary for Regional Affairs, performing the non-exclusive duties of the Assistant Secretary of Commerce for Economic Development.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 510 and 512

Medicare Program; Cancellation of Advancing Care Coordination Through Episode Payment and Cardiac Rehabilitation Incentive Payment Models; Changes to Comprehensive Care for Joint Replacement Payment Model: Extreme and Uncontrollable Circumstances Policy for the Comprehensive Care for Joint Replacement Payment Model; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 510 and 512

[CMS–5524–F and IFC]

RIN 0938–AT16

Medicare Program; Cancellation of Advancing Care Coordination Through Episode Payment and Cardiac Rehabilitation Incentive Payment Models; Changes to Comprehensive Care for Joint Replacement Payment Model; Extreme and Uncontrollable Circumstances Policy for the Comprehensive Care for Joint Replacement Payment Model

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; interim final rule with comment period.

SUMMARY: This final rule cancels the Episode Payment Models (EPMs) and Cardiac Rehabilitation (CR) Incentive Payment Model and rescinds the regulations governing these models. It also implements certain revisions to the Comprehensive Care for Joint Replacement (CJR) model, including: Giving certain hospitals selected for participation in the CJR model a one-time option to choose whether to continue their participation in the model; technical refinements and clarifications for certain payment, reconciliation and quality provisions; and a change to increase the pool of eligible clinicians that qualify as affiliated practitioners under the Advanced Alternative Payment Model (Advanced APM) track. An interim final rule with comment period is being issued in conjunction with this final rule in order to address the need for a policy to provide some flexibility in the determination of episode costs for providers located in areas impacted by extreme and uncontrollable circumstances.

DATES: *Effective Date:* These final and interim final regulations are effective on January 1, 2018.

Comment Period: To be assured consideration, comments on the interim final rule with comment period presented in section III. of this document must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. EST on January 30, 2018.

FOR FURTHER INFORMATION CONTACT: Nora Fleming, (410) 786–6908.

For questions related to the CJR model: CJR@cms.hhs.gov.

For questions related to the EPMS: EPMRULE@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Background

A. Executive Summary

1. Purpose

The purpose of this final rule is to finalize our proposal to cancel the Episode Payment Models (EPMs) and the Cardiac Rehabilitation (CR) Incentive Payment Model, established by the Center for Medicare and Medicaid Innovation (Innovation Center) under the authority of section 1115A of the Social Security Act (the Act) and to rescind the regulations at 42 CFR part 512. Additionally, this final rule finalizes our proposal to make participation voluntary for all hospitals in approximately half of the geographic areas selected for participation in the Comprehensive Care for Joint Replacement (CJR) model (33 of 67 Metropolitan Statistical Areas [MSAs] selected; see 80 FR 73299 Table 4) and for low-volume and rural hospitals in all of the geographic areas selected for participation in the CJR model, beginning in performance year 3. It also implements several technical refinements and clarifications for certain CJR model payment, reconciliation, and quality provisions, and finalizes our proposed change to the criteria for the Affiliated Practitioner List to broaden the CJR Advanced Alternative Payment Model (Advanced APM) track.

As stated in the proposed rule, we note that reevaluation of policies and programs, as well as revised rulemaking, are within an agency's discretion, especially after a change in Administration. The EPMS and the CR Incentive Payment Model were designed and implemented as mandatory payment models via notice-and-comment rulemaking to test the effects of bundling cardiac and orthopedic care. The CJR model was also established as a mandatory payment model via notice-and-comment rulemaking to test the effects of bundling orthopedic episodes involving lower extremity joint replacements. The CJR model began on April 1, 2016 and is currently in its second performance year.

While we continue to believe that cardiac and orthopedic episode models offer opportunities to redesign care processes and improve quality and care coordination while lowering spending, we determined after careful review that it was necessary to propose to rescind the regulations at 42 CFR part 512,

which relate to the EPMS and CR Incentive Payment Model, and reduce the scope of the CJR model for the following reasons. As stated in the proposed rule, we believe that requiring hospitals to participate in additional episode payment models at this time is not in the best interest of the Agency or the affected providers. Many providers are currently engaged in voluntary CMS initiatives, and we expect to continue offering initiatives, including episode-based payment models. Similarly, we also believe that reducing the number of providers required to participate in the CJR model will allow us to continue to evaluate its effects while limiting the geographic reach of our current mandatory models. As we mentioned in the proposed rule, we considered altering the design of the EPMS and the CR Incentive Payment Model to allow for voluntary participation and to take into account other feedback on the models. However, we noted that this would potentially involve restructuring the model design, payment methodologies, financial arrangement provisions, and/or quality measures, and we did not believe that such alterations would offer providers enough time to prepare, given the planned January 1, 2018 start date. In addition, if at a later date we test these or similar models, we would not expect to implement them through rulemaking if made voluntary but would employ the methods used to implement other voluntary models.

Finally, as stated in the proposed rule, we believe that cancelling the EPMS and CR Incentive Payment Model, as well as altering the scope of the CJR model, offers CMS flexibility to design and test other episode-based payment models while evaluating the ongoing CJR model. The CJR model has been operational for over a year and a half, and we have begun to provide participant hospitals initial financial and quality results from the first performance year. In many cases, CJR participant hospitals have invested in care redesign, and we want to recognize such commitments to improvement while reducing the number of hospitals that are required to participate.

We sought public comment on the proposals contained in the August 17, 2017 proposed rule (82 FR 39310 through 39333), and also on any alternatives considered.

2. Summary of Costs and Benefits

In the proposed rule, we stated that we did not anticipate that the cancellation of the EPMS and CR Incentive Payment Model prior to the start of those models would have any

costs to providers. As discussed in section II.A. of this final rule and interim final rule with comment period, some commenters noted that providers who assumed that the EPMs would begin on January 1, 2018, had incurred preparatory costs in terms of care pathway redesign and the creation of care coordinator positions. However, as the commenters did not specifically quantify these costs, we are unable to estimate them here. As shown in our impact analysis in section V. of this final rule and interim final rule with comment period, we estimate that the CJR model changes will reduce the previously projected CJR model savings (82 FR 603) by a total of approximately \$108 million. Of the total projected reduction in savings, \$106 million is attributable to CJR model changes over the final three performance years while approximately \$2 million is attributable to the extreme and uncontrollable circumstance policy. Accordingly, we estimate that the total CJR model impact after the changes in this final rule will be \$189 million, instead of \$294 million (\$106 million less in savings), over the remaining 3-year performance period (2018 through 2020) of the CJR model. Additionally, we estimate that the financial impacts resulting from the interim final rule with comment period will be a further reduction in savings of approximately \$2 million during 2017, noting that we are implementing the extreme and uncontrollable circumstances policy (via an interim final rule with comment) in this rule for the 2017 reconciliation that will occur beginning in March of 2018. Our impact analysis has some degree of uncertainty and makes assumptions as discussed in section V. of this final rule and interim final rule with comment period. In addition to these estimated impacts, as with many of the Innovation Center models, the goals that participants are attempting to achieve include improving overall quality of care, enhancing participating provider infrastructure to support better care management, and reducing costs. We anticipate there will continue to be a broader focus on care coordination and quality improvement through the CJR model among hospitals and other providers and suppliers within the Medicare program that may lead to better care management and improved quality of care for beneficiaries.

3. Interim Final Rule Regarding Significant Hardship Due to Extreme and Uncontrollable Circumstances in the CJR Model

We are issuing this interim final rule with comment period in conjunction

with this final rule in order to address the need for a policy to provide some flexibility in the determination of episode costs for CJR hospitals located in areas impacted by extreme and uncontrollable circumstances. Specifically, this policy would apply to CJR hospitals located in a county, parish, U.S. territory, or tribal government designated in a major disaster declaration under the Stafford Act, if as a result of the same major disaster the Secretary of Health and Human Services (the Secretary) authorized waivers under section 1135 of the Act.

B. Background

Under the authority of section 1115A of the Act, through notice-and-comment rulemaking, CMS' Center for Medicare and Medicaid Innovation (Innovation Center) established the CJR model in a final rule titled "Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services" published in the November 24, 2015 **Federal Register** (80 FR 73274 through 73554) (referred to in this final rule as the "CJR model final rule"). We established three new models for acute myocardial infarction, coronary artery bypass graft, and surgical hip/femur fracture treatment episodes of care, which are collectively called the Episode Payment Models (EPMs), created a Cardiac Rehabilitation Incentive Payment Model (CR Incentive Payment Model), and revised several existing provisions for the CJR model, in a final rule titled "Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model" published in the January 3, 2017 **Federal Register** (82 FR 180) (referred to in this final rule as the "EPM final rule").

The effective date for most of the provisions of the EPM final rule was February 18, 2017, and in the EPM final rule we specified an effective date of July 1, 2017 for certain CJR model regulatory changes intended to align with a July 1, 2017 applicability, or start, date for the EPMs and CR Incentive Payment Model. On January 20, 2017, the Assistant to the President and Chief of Staff issued a memorandum titled "Regulatory Freeze Pending Review" that instructed Federal agencies to temporarily postpone the effective date for 60 days from the date of the memorandum for regulations that had been published in the **Federal Register** but had not taken

effect, for purposes of reviewing the rules and considering potentially proposing further notice-and-comment rulemaking. Accordingly, on February 17, 2017, we issued a final rule in the **Federal Register** (82 FR 10961) to delay until March 21, 2017 the effective date of any provisions of the EPM final rule that were to become effective on February 18, 2017. We subsequently issued an interim final rule with comment (IFC) period in the **Federal Register** on March 21, 2017 (referred to in this final rule as the "March 21, 2017 IFC") (82 FR 14464). The March 21, 2017 IFC further delayed the effective date of the provisions that were to take effect March 21, 2017 until May 20, 2017, further delayed the applicability date of the EPMs and CR Incentive Payment Model provisions until October 1, 2017, and further delayed the effective date of the conforming CJR model changes until October 1, 2017. In the March 21, 2017 IFC, we also solicited public comment on further delaying the applicability date for the EPMs and CR Incentive Payment Model provisions, as well as the effective date for the conforming changes to the CJR model from October 1, 2017 until January 1, 2018 to allow for additional notice-and-comment rulemaking. Based on the public comments we received in response to the March 21, 2017 IFC, we published a final rule (referred to in this final rule as the "May 19, 2017 final delay rule") on May 19, 2017 (82 FR 22895) to finalize a January 1, 2018 applicability date for the EPMs and CR Incentive Payment Model provisions, as well as to finalize a January 1, 2018 effective date for the conforming changes to the CJR model (specifically amending § 510.2; adding § 510.110; amending § 510.120; amending § 510.405; amending § 510.410; revising § 510.500; revising § 510.505; adding § 510.506; and amending § 510.515). Additional changes to the CJR model, in accordance with the March 21, 2017 IFC, took effect May 20, 2017.

As we stated in the May 19, 2017 final delay rule (82 FR 22897), we received a number of comments on the models that did not relate to the start date change. These additional comments suggested that we reconsider or revise various model aspects, policies and design components; in particular, many of these comments suggested that we should make participation in the models voluntary instead of mandatory. We did not respond to these comments in the May 19, 2017 final delay rule, as the comments were out of scope of that rulemaking, but we stated that we might

take them into consideration in future rulemaking.

In the August 17, 2017 **Federal Register** (82 FR 39310 through 39333), we published a proposed rule that proposed to cancel the EPMs and CR Incentive Payment Model, and to rescind the regulations governing these models, as well as implement certain revisions to the CJR model.

We received approximately 85 timely pieces of correspondence containing multiple comments in response to the August 17, 2017 proposed rule. In the following sections of this final rule and interim final rule with comment period, we discuss our specific proposals, public comment, and our responses to those comments.

II. Provisions of the Proposed Regulations and Analysis of and Response to Public Comments

A. Cancellation of EPMs and Cardiac Rehabilitation Incentive Payment Model

In the January 3, 2017 EPM final rule, we established three bundled payment models for acute myocardial infarction (AMI), coronary artery bypass graft (CABG), and surgical hip/femur fracture treatment (SHFFT) episodes, and a Cardiac Rehabilitation (CR) Incentive Payment Model. These models were similar to other Innovation Center models and focused on complex cases where we believe improvements in care coordination and other care redesign efforts offer the potential for improved patient outcomes and more efficient resource use. Many stakeholders, including commenters responding to the March 21, 2017 IFC, expressed concerns about provider burden and challenges these new models would present. We noted in the May 19, 2017 final delay rule (82 FR 22896), which finalized a January 1, 2018 start date for the EPMs and the CR Incentive Payment Model, that we would engage in notice-and-comment rulemaking on these models if warranted. We also noted that we received 47 submissions in response to the March 21, 2017 IFC. These responses contained a mix of in- and out-of-scope comments (82 FR 22899). In the May 19, 2017 final delay rule (82 FR 22897), we noted that in addition to commenting on the change to the effective date for the EPMs and CR Incentive Payment Model and certain provisions of the CJR model, commenters highlighted concerns with the models' design, including but not limited to: Participation requirements, data, pricing, quality measures, episode length, CR and skilled nursing facility (SNF) waivers, beneficiary exclusions and notification requirements,

repayment, coding, and model overlap issues. Specifically, many commenters were opposed to the mandatory participation requirements, arguing that these models would force many providers who lack familiarity, experience, or proper infrastructure to quickly support care redesign efforts for a new bundled payment system. Many commenters were concerned that these mandatory models might harm patients and providers before CMS knows how these models might affect access to care, quality, or outcomes. Additionally, commenters were concerned that unrelated services would be incorporated into episode prices under the finalized price-setting methodology, in which we base prices on MS-DRGs and use clinical review to identify excluded, unrelated services rather than identifying included, related services. Commenters also expressed concern that this pricing approach would result in diagnosis codes classifying certain services as included, when in fact these services have no clinical relevance to the episode(s). Commenters were further concerned with the fact that CMS would progressively incorporate regional data into EPM target prices, where 100 percent of the EPM target price would be based on regional data by performance year 4. Commenters also took issue with the quality measures established for the SHFFT model, stating that these measures are not clinically related to the target population and are inappropriate for use in assessing the care provided to beneficiaries in the SHFFT model. In addition, commenters requested revisions to the CABG EPM to allow participants the option to use a CABG composite score developed by the Society of Thoracic Surgeons (STS) rather than the all-cause mortality measure.

Commenters also expressed concerns about the design of the CR Incentive Payment Model waivers. Commenters stated that current direct supervision requirements would continue to contribute to a lack of access to cardiac rehabilitation services and would inhibit providers' ability to redesign care for the CR Incentive Payment Model. Commenters suggested broadening the CR physician supervision waiver because the current waivers would not cover non-model beneficiaries who might be obtaining services concurrently with model participants and are therefore not sufficient. Other commenters were concerned with the precedence rules for model overlap with Models 2, 3 and 4 of the Innovation Center's Bundled

Payments for Care Improvement (BPCI) initiative.

In the May 19, 2017 final delay rule (82 FR 22895), we stated that we might consider these public comments in future rulemaking. Based on our additional review and consideration of this stakeholder feedback, we concluded that certain aspects of the design of the EPMs and the CR Incentive Payment Model should be improved and more fully developed prior to the start of the models, and that moving forward with the implementation of the EPMs and CR Incentive Payment Model as put forth in the January 3, 2017 EPM final rule would not be in the best interest of beneficiaries or providers at this time. Based on our acknowledgment of the many concerns about the design of these models articulated by stakeholders, we proposed to cancel the EPMs and CR Incentive Payment Model before they began. Accordingly, we proposed to rescind 42 CFR part 512 in its entirety. We sought public comment on our proposal to cancel the EPMs and CR Incentive Payment Model.

We noted that, if the proposal to cancel the EPMs and CR Incentive Payment Model was finalized, providers interested in participating in bundled payment models would still have an opportunity to do so during calendar year (CY) 2018 via new bundled payment models. The Innovation Center expects to develop new bundled payment model(s) during CY 2018 that would be designed to meet the criteria to be an Advanced APM. We also noted the strong evidence base and other positive stakeholder feedback that we have received regarding the CR Incentive Payment Model. As we further develop the Innovation Center's portfolio of models, we may revisit this model and if we do, we will consider stakeholder feedback.

Comment: The majority of commenters supported cancellation of the EPMs, although many of these commenters noted that they support the general shift toward value-based payment models. Many of these commenters noted they supported deregulation in general and supported CMS' efforts to ease the administrative burden of mandatory models, voicing concern that mandatory models unduly burden hospitals who may be unprepared for model participation and compromise patient access and quality of care delivery. Other commenters stated that mandatory models disadvantage inexperienced or under-resourced providers, and are too complex. Commenters argued these providers, many of whom are smaller hospitals or systems, face logistical and

practical challenges that would be exacerbated by comparing all providers, and their varying levels of resources, to one another through a mandatory initiative. Commenters also argued that providers need models with greater flexibility, support, and incentives.

Several commenters supporting the cancellation of the EPMs stated that mandatory models fail to solicit and incorporate stakeholder feedback, and that CMS moved too quickly in finalizing the EPMs. Commenters stated that the models should be improved and more fully developed prior to the start of the models. Commenters highlighted concerns with many aspects of the models' design, including: Participation requirements; episode selection; data; pricing, especially the movement to regional pricing under the models; quality measures used in the models, especially for the CABG and SHFFT models; episode length; clinical homogeneity (or lack thereof) of the included patient population; episode inclusions and exclusions; CR and skilled nursing facility (SNF) waivers; beneficiary exclusions and notification requirements; reconciliation and repayment policies; and model overlap issues that impact providers already participating in APMs or other programs. Commenters also stated that there is insufficient evidence and evaluation of the efficacy of mandatory bundled payment models. They stated that the EPMs were not built upon the success of existing cardiac models, and that CMS should use this opportunity to gather broad stakeholder feedback.

Response: We thank commenters for their support for our proposal to cancel the EPMs. We agree with commenters' assertions that we should reduce provider burden when warranted, while maintaining the ability for providers to participate in future opportunities that shift towards value-based payment models. We continue to believe it is important to test and evaluate the effects of episode payment approaches on a broad range of Medicare providers. However, we agree with commenters that the design of the specific EPMs we are cancelling in this final rule and interim final rule with comment period should be further studied and refined, and we also agree with commenters that seeking additional stakeholder input in future model design is important. We note that in the recent Request for Information (posted on the CMS Web site at <https://innovation.cms.gov/Files/x/newdirection-rfi.pdf>), CMS solicited comments through November 20, 2017 on suggestions for a new direction for the Innovation Center. CMS will carefully evaluate any input received

regarding future models and the design of these models.

Comment: Several commenters contended that CMS lacks the authority to mandate participation in Innovation Center models. Commenters stated they do not believe that section 1115A of the Act provides CMS with the authority to mandate provider and supplier participation in Innovation Center models. These commenters stated that mandatory provider and supplier participation in models runs counter to both the letter and spirit of the law that established the Innovation Center, including the scope of its authority to test models under section 1115A of the Act and the directive to make recommendations to Congress set forth in section 1115A(g) of the Act. A commenter argued that the EPMs are a prohibited expansion in scope of the CJR model.

Response: We disagree that the Innovation Center lacks the authority to test mandatory models under section 1115A of the Act. Section 1115A of the Act authorizes the Secretary to test innovative payment and service delivery models to reduce program expenditures while preserving or enhancing the quality of care furnished to Medicare, Medicaid, and Children's Health Insurance Program (CHIP) beneficiaries. Section 1115A of the Act does not specify that participation in models must be voluntary. Moreover, the Secretary has authority to establish regulations to carry out the administration of Medicare. Specifically, the Secretary has authority under both sections 1102 and 1871 of the Act to implement regulations as necessary to administer Medicare, including testing these Medicare payment and service delivery models. However, as we discuss later in this section, the Innovation Center will approach new model design with a focus on reducing provider burden. Finally, we disagree that the EPMs were an expansion of CJR. The SHFFT Model was designed as a separate and distinct model from the CJR model, utilizing different MS-DRGs.

Comment: Some commenters noted that the movement away from mandatory models represents a change in priorities from the previous administration. They acknowledged this change in preference from mandatory to voluntary model design but questioned that CMS continue to work toward achieving the goals of bundled payment models. They stated their desire to see CMS strike the best balance possible between reducing provider burden and incentivizing health system change that will allow for broad opportunities for

Advanced APM participation beginning in CY 2018. A commenter noted that easing the regulatory burden on health systems and continuing the transition into value-based care need not be mutually exclusive goals.

Response: We agree with the commenter that easing regulatory burden on health systems and continuing the transition into value-based care are not mutually exclusive goals. As we noted in section I. of this final rule and interim final rule with comment period, review and reevaluation of policies and programs, as well as revised rulemaking, are within an agency's discretion, and that discretion is often exercised after a change in administration occurs. CMS is setting a new direction for the Innovation Center to promote patient-centered care and test market-driven reforms that empower beneficiaries as consumers, provide price transparency, increase choices and competition to drive quality, reduce costs, and improve outcomes. We note that in the recent Request for Information (posted on the CMS Web site at <https://innovation.cms.gov/Files/x/newdirection-rfi.pdf>), CMS solicited comments through November 20, 2017 on suggestions for a new direction for the Innovation Center. As stated in the RFI, CMS believes that while existing partnerships with healthcare providers, clinicians, states, payers and stakeholders have generated important value and lessons, CMS is setting a new direction for the Innovation Center. New models will be designed to reduce burdensome requirements and unnecessary regulations to the extent possible to allow physicians and other providers to focus on providing high-quality healthcare to their patients. We appreciate the commenters' understanding of this change in priorities, and we reiterate CMS's commitment to developing models that reward value-based care and allow opportunities for Advanced APM participation for 2018 and future years.

Comment: Multiple commenters expressed concern that the cancellation of the EPMs will signal to the innovation community (that is, those who invest valuable resources into the development of new technologies and systems with the goal of transforming healthcare delivery) that healthcare payment policy is subject to the uncertainty of *ad hoc* reversal of transformative initiatives, thus stifling further innovation efforts. A commenter stated that cancellation of the EPMs will send signals that will slow the transformation of healthcare and confuse providers regarding the urgency

of system change from FFS to value-based payment. Another commenter stated that requiring providers to adapt to innovative, value-based payment models is preferable to reinforcing current, financially unsustainable payment models that incentivize the delivery of services without consideration for their cost, quality, and outcomes.

Response: We acknowledge the commenters' concerns about the signals that cancellation of the EPMs could send regarding our commitment to moving away from FFS toward value-based payment. We reiterate that CMS continues to explore new models to incentivize innovation and value-based payment and is committed to innovations that will foster an affordable, accessible healthcare system that puts patients first.

Comment: Many commenters objected to the outright cancellation of EPMs and stated that the models should be offered on a voluntary basis. These commenters expressed concern about the precedent established by the cancellation of a planned model after health systems have expended significant time and resources to prepare for participation in the initiative, and asserted that, without offering the option of voluntary participation, we would disadvantage health systems that had already made substantial investments in care redesign in anticipation of participating in EPMs, as this would not provide opportunity for return on those investments. Specifically, several commenters noted that since the finalization of the EPMs, providers have invested considerable time and funding in developing the necessary programs, processes, infrastructure and financial relationships in preparation for these programs. Commenters stated that while there may be limited or minimal additional costs required going forward with the cancellation of these models, it is worth nothing that significant investment was made by various stakeholders in preparation for them, particularly as they had been finalized by CMS. Multiple commenters stated that, since the finalization of the rule implementing EPMs, their health systems have already made significant investments and expended resources on care redesign to meet the payment models' requirements. While these commenters did not quantify the cost of these investments they noted that the investments included hiring care coordinators, re-engineering the process for admission from the Emergency Department for hip and femur fractures, and improving communication between their health system's regional hospitals

and its main hospital, such that innovations in efficient and effective care coordination are already emerging from this implementation process. One commenter further stated that preparation for implementing the models resulted in a culture shift within their organization, especially with respect to communication and coordination between providers. Another commenter stated the time clinicians spent preparing for these models is ultimately a loss for patient care.

Response: We appreciate the commenters' support for voluntary versions of the EPMs. However, in reviewing the other comments received in support of the cancellation due to concerns with multiple aspects of the models, we continue to believe that there would not be enough time to sufficiently revise the models given the planned January 1, 2018 start date and that implementing these models as originally designed would not be in the best interest of beneficiaries or providers. We thank the commenters for their submissions noting that providers have invested in infrastructure, increased staffing, and care redesign in response to the mandatory nature of the EPMs. We appreciate these initiatives taken by hospitals selected for the EPMs and thank them for bringing these actions to our attention. We note that commenters did not provide enough detail about the hiring status or educational and licensing requirements of any care coordinator positions they may have created and filled (that is, full or part-time, Registered Nurse or non-Registered Nurse, scope of work, etc.) for us to quantify an economic impact for these case coordination investments. Likewise investments in re-engineering of processes and communication systems were not quantified and thus preclude us from attempting to estimate a dollar value impact. We believe that these investments and preparations will position providers for successful participation in future initiatives that may provide opportunities for return on these investments. Further we believe hospitals that made preparations, especially those that have created new care coordinator positions that they intend to keep staffed and those that have implemented process improvements that they intend to keep in place, are likely to provide enhanced patient care by improving the efficiency and quality of care for Medicare beneficiaries and improving the coordination of care from the initial hospitalization through recovery, rather than reverting to previous practices that

may not have placed as much emphasis on efficiency, quality, and care coordination. As we remain committed to moving toward value-based payment, we believe that investments in care coordination and quality improvement will ultimately benefit both providers and patients.

Comment: Some commenters stated their opposition to the cancellation of EPM models and stated that they should be implemented as mandatory models. A commenter stated the belief that providers would have adapted to the models and beneficiaries' access to care would not have been affected, and suggested that, rather than cancelling the models, CMS should further delay the start date to allow providers more time to prepare for implementation of the models. Other commenters noted that mandatory models, compared to voluntary models, create a more reliable experiment with the ability to generate evidence of bundled payments' effectiveness, and they increase the chances of bringing bundled payments to scale nationally. Another commenter stated that they support mandatory models because they are necessary to eliminate the "pilot program" mentality of providers. A commenter noted that voluntary models provide opportunities for gaming. Another commenter asserted that the rationale used by CMS to rescind the EPMs is flawed and contradicts statements outlined in the EPM final rule. This commenter further stated that, while there will always be innovators who will participate in voluntary models and guide their peers in systematic improvements leading to changes in overall healthcare delivery, non-participant providers have been reluctant to accept a change in their clinical practice and as a result have not demonstrated the clinical improvement that others have seen, due to the lack of a mandate for change. This commenter expressed concern that without mandatory models, improvement will not remain consistent and there will likely be a reversion to "the norm." Another commenter stated their opposition to the cancellation of EPMs and their belief that mandatory models should be implemented more broadly. This commenter further stated their belief that the cancellation of EPMs represents an attempt to delay the move to value-based reimbursement and maintain the FFS reimbursement model, which will benefit the financial interests of healthcare companies at the expense of the well-being and economic interests of the healthcare consumer and American taxpayer. Another commenter similarly stated their opposition to the

cancellation of EPMs based on their concern about the long term fiscal solvency of Medicare.

Response: We appreciate the commenters pointing out some of the specific benefits of mandatory, as opposed to voluntary, models. We agree generally that mandatory models have certain advantages over voluntary models, and we have had to weigh those advantages against our goals of minimizing provider burden at this time and against the design-related concerns raised by stakeholders for these specific EPM and CR Incentive Payment Models. Furthermore, although we monitor provider behavior to be sure that hospitals' implementation strategies are in compliance with the CJR model and other Medicare requirements, and to identify individual providers that merit additional investigation, educational outreach, or referral to program integrity contractors, cancelling the EPMs will provide more time to fully evaluate the impact of CJR.

However, we take seriously the commenters' concerns about the urgency of continuing our movement toward value-based care in order to accommodate an aging population with increasing levels of chronic conditions, while also acting as responsible stewards of the Medicare Trust Funds. We continue to believe that value-based payment methodologies will play an essential role in lowering costs and improving quality of care, which will be necessary in order to maintain Medicare's fiscal solvency. At this time, we believe that focusing on the development of different bundled payment models and engaging more providers in these models is the best way to drive health system change while minimizing provider burden and maintaining patient access to care.

Comment: We received many comments in support of our proposal to cancel the CR Incentive Payment model. Commenters supporting our proposal to cancel the CR Incentive Payment Model lauded the decelerated implementation of mandatory models and noted that the mandatory CR Incentive Payment Model would have created additional undue administrative burden for providers. Many of these commenters suggested that the CR Incentive Payment Model would strain hospitals' limited resources, leading to decreased access to care or quality of care.

Response: We appreciate some commenters' support of our proposal to cancel the mandatory CR Incentive Payment Model. We agree with the commenters that it is important to lessen provider burden where we can.

Comment: Several commenters opposed CMS' proposal to cancel the CR Incentive Payment Model. These commenters stated that they saw the CR Incentive Payment Model as an important step toward value-based payments and that cancelling the CR Incentive Payment Model would result in a missed opportunity to collect evidence. Commenters opposing the cancellations also cited the financial investments providers made in preparation for the model. Some of these commenters felt that a mandatory cardiac model would force otherwise-hesitant providers to focus on enhanced care management, improved infrastructure, and cost reduction. Several commenters cited evidence of the effectiveness of cardiac rehabilitation and its relatively low utilization levels as support for continuing the model, stating that it would be an effective test with or without concurrent EPM implementation. A commenter stated that implementing the CR Incentive Payment Model alone would provide independent testing of its effects, and some commenters requested that the model continue as a limited pilot.

Response: We thank commenters for their input and note that we agree with the premise cited by commenters that the CR Incentive Payment Model could provide an opportunity to collect evidence and may support provision of an under-utilized yet effective intervention. However, we believe that the nature of the CR Incentive Payment Model does not permit sufficient provider choice and our intention in removing this mandatory model at this time is to enhance providers' ability to determine the models and initiatives that suit their organizations while increasing quality and value-based payments. Additionally, we note the obstacles presented by the cancellation of the cardiac EPMs and conforming regulations with which this model is aligned. Due to the manner in which the regulations guiding the cardiac EPMs were interwoven with those of the CR Incentive Payment Model, we do not believe it would be feasible to continue the mandatory CR Incentive Payment Model alone at this time since we are cancelling the EPMs and rescinding all of the associated regulations. However, as we stated in the proposed rule, as we further develop the Innovation Center's portfolio of models, we may revisit the concept of a model with a focus on cardiac rehabilitation and, if we do, will consider stakeholder feedback.

Comment: Many commenters stated that the CR Incentive Payment Model required improvements prior to

implementation, including many who requested that it continue as a voluntary model. A few requested that we solicit more stakeholder feedback throughout model development, while others requested altered or new model waivers. Many commenters supporting cancellation of the CR Incentive Payment Model recommended that any potential future iterations of the model should be separate from other APMs. A commenter asserted that the CR Incentive Payment Model could be effective without incentivizing such a high number of CR or intensive cardiac rehabilitation (ICR) services. Another commenter recommended allowing shared financial arrangements among CR programs.

Response: We thank commenters for suggested improvements to the CR Incentive Payment Model, and would consider this input for any future cardiac rehabilitation models.

Comment: Many commenters encouraged CMS to expedite the introduction of the new voluntary bundled payment models that would meet the criteria to be Advanced APMs. Commenters noted making new voluntary models available as soon as possible will allow hospitals to capitalize on the preparations they made in anticipation of the EPMs and will also allow them to partner with clinicians to provide better quality, more efficient care. Commenters are concerned that the ambiguity surrounding the future of EPMs has posed challenges for hospitals attempting to determine where and how to invest in implementation. Commenters supported the development of new models that meet the Advanced APM definition under the Quality Payment Program and urged CMS to build upon the lessons learned in the Bundled Payments for Care Improvement (BPCI) initiative. A commenter urged CMS to align advancements included in the CJR and EPM models into a new bundled payment model. A commenter recommended that CMS ensure that a voluntary model is available when the current BPCI initiative expires. Several commenters urged CMS to implement new voluntary models before the proposed voluntary election period for CJR (January 1–January 31, 2018) to give these providers as well as BPCI participants adequate time to prepare for future models. Commenters suggested that in the alternative, CMS should implement new voluntary models prior to BPCI's conclusion in September 2018. A commenter urged CMS to limit the size and scope of future models and ensure open and

transparent communication with stakeholders during model development. Commenters suggested that CMS should release data on baselines and targets in advance of a model's application deadline to allow entities to prepare for the most appropriate models. Commenters encouraged CMS to initiate collaborative process between CMS, providers and other stakeholders as they stated this would result in more robust and effective models.

Response: We note providers' interest in future bundled payment models that meet the criteria to be an Advanced APM and are considering options for developing such models.

Comment: Numerous commenters suggested changes to the overall design of the EPMs, CR Incentive Payment Model, BPCI initiative, and CJR model that were outside of the scope of the August 17, 2017 proposed rule. These comments touched on model participation requirements, data, pricing, choice of quality measures used, episode length, CR and SNF waivers, beneficiary exclusions and notification requirements, repayment, coding, model overlap issues, and the inclusion of depression screening in models. Additionally we received public comments suggesting alternative model proposals that include physician-based, outcome-based, procedure-based, specialty-based, and Medicare Advantage APMs. Commenters recommended that the CJR model and future models provide more collaboration opportunities and offer broader waivers of fraud and abuse laws, such as the physician self-referral law commonly known as the "Stark Law," and the Anti-Kickback statute. Several commenters stated that the "Stark Law," which they contend has not been updated statutorily for over 2 decades, is challenging to work through when developing financial arrangements, as small, unintentional technical errors on the part of physicians or staff could lead to heavy penalties under this strict liability statute, and that the cost of compliance and disclosure can be prohibitive to small and medium practices who would otherwise want to participate in new models. Commenters encouraged data transparency and access to substance abuse claims, an APM Ombudsman, differing episode durations, a uniform model overlap policy, use of care coordinators, pricing and reconciliation modifications, different quality measures, and clarification of certified electronic health record technology (CEHRT) requirements.

Response: We consider these public comments to be outside of the scope of the August 17, 2017 proposed rule; and therefore, we are not addressing them in this final rule and interim final rule with comment period. We may consider these public comments in future rulemaking.

Summary of Final Decisions: We are finalizing our proposal to cancel the Episode Payment Models (EPMs) and Cardiac Rehabilitation (CR) Incentive Payment Model and to rescind the regulations at 42 CFR part 512.

B. Changes to the CJR Model Participation Requirements

1. Voluntary Participation Election (Opt-In) for Certain MSAs and Low-Volume and Rural Hospitals

The CJR model began on April 1, 2016. The model is currently nearing completion of the second performance year, which includes episodes ending on or after January 1, 2017 and on or before December 31, 2017. The third performance year, which includes all CJR episodes ending on or after January 1, 2018 and on or before December 31, 2018, would necessarily incorporate episodes beginning before January 2018. The fifth performance year will end on December 31, 2020. Currently, with limited exceptions, hospitals located in the 67 geographic areas selected for participation in the CJR model must participate in the model through December 31, 2020; that is, their participation in the CJR model is mandatory unless the hospital is an episode initiator for a lower-extremity joint replacement (LEJR) episode in the risk-bearing period of Models 2 or 4 of the BPCI initiative. Hospitals with a CCN primary address in one of the 67 selected geographic areas selected for CJR that participated in Model 1 of the BPCI initiative, which ended on December 31, 2016, began participating in the CJR model when their participation in the BPCI initiative ended.

Based on smaller, voluntary tests of episode-based payment models and demonstrations, such as the Acute Care Episode (ACE) demonstration and the BPCI initiative, that have indicated a potential to improve beneficiaries' care while reducing costs (see ACE evaluation at: <https://downloads.cms.gov/files/cmml/ace-evaluationreport-final-5-2-14.pdf> and BPCI evaluation at: <https://innovation.cms.gov/Files/reports/BPCI-EvalRpt1.pdf>), we finalized the CJR model with mandatory participation in the 67 selected geographic areas so that we could further test delivery of better

care at a lower cost across a wide range of hospitals, including some hospitals that might not otherwise participate, in many locations across the country. In the CJR model final rule (80 FR 73276), we stated that we believed that by requiring the participation of a large number of hospitals with diverse characteristics, the CJR model would result in a robust data set for evaluation of this bundled payment approach, and would stimulate the rapid development of new evidence-based knowledge. Testing the model in this manner would also allow us to learn more about patterns of inefficient utilization of healthcare services and how to incentivize the improvement of quality for common LEJR procedure episodes.

After further consideration of stakeholder feedback, including responses we received on the March 21, 2017 IFC, we proposed certain revisions to the mandatory participation requirements for the CJR model to allow us to continue to evaluate the effects of the model while limiting the geographic reach of our current mandatory models. Specifically, we proposed that the CJR model would continue on a mandatory basis in approximately half of the selected geographic areas (that is, 34 of the 67 selected geographic areas), with an exception for low-volume and rural hospitals, and continue on a voluntary basis in the other areas (that is, 33 of the 67 selected geographic areas).

The geographic areas for the CJR model are certain Metropolitan Statistical Areas (MSAs) that were selected following the requirements in § 510.105 as discussed in the CJR model final rule (80 FR 73297 through 73299). In § 510.2, an MSA is defined as a core-based statistical area associated with at least one urbanized area that has a population of at least 50,000. In selecting the 67 MSAs for inclusion in the CJR model, the 196 eligible MSAs were stratified into 8 groups based on MSA average wage adjusted historic LEJR episode payments and MSA population size (80 FR 41207). Specifically, we classified MSAs according to their average LEJR episode payment into four categories based on the 25th, 50th and 75th percentiles of the distribution of the 196 potentially selectable MSAs as determined in the exclusion rules as applied in the CJR model proposed rule (80 FR 41198). This approach ranked the MSAs relative to one another and created four equally sized groups of 49. The population distribution was divided at the median point for the MSAs eligible for potential selection, creating 8 groups. Of the 196 eligible MSAs, we chose 67 MSAs via a stratified random selection process as

discussed in the CJR model final rule (80 FR 73291).

In reviewing our discussion of the MSA selection and the MSA volume needed to provide adequate statistical power to evaluate the impact of the model in the CJR model final rule (80 FR 73297), we determined that reducing the mandatory MSA volume in half by selecting the 34 MSAs with the highest average wage-adjusted historic LEJR episode payments for continued mandatory participation could allow us to evaluate the effects of the CJR model across a wide range of providers, including some that might not otherwise participate in the model. Higher payment areas are most likely to have significant room for improvement in creating efficiencies and greater variations in practice patterns. Thus, the selection of more expensive MSAs was the most appropriate approach to fulfilling the overall priorities of the CJR model to increase efficiencies and savings for LEJR episodes while maintaining or improving the overall quality of care.

The original determination of the sample size need in the CJR model final rule was constructed to be able to observe a 2-percent reduction in wage-adjusted episode spending after 1 year. This amount was chosen based on the anticipated amount of the discount applied in the target price. In considering the degree of certainty that would be needed to generate reliable statistical estimates, we assumed a 20-percent chance of false positive and a 30-percent chance of a false negative. Using these parameters, we determined that the number of MSAs needed ranged from 50 to 150. In order to allow for some degree of flexibility, we selected 75 MSAs, which were narrowed to 67 due to final exclusion criteria.

As we reviewed the CJR model for the August 17, 2017 proposed rule, we noted that, excluding quarterly reconciliation amounts, evaluation results from BPCI Model 2 indicated possible reductions in fee-for-service spending of approximately 3 percent on orthopedic surgery episodes for hospitals participating in the LEJR episode bundle (<https://innovation.cms.gov/Files/reports/bpci-models2-4-yr2evalrpt.pdf>). We examined the sample size needed to detect a 3-percent reduction in CJR model episode spending after 1 year using the same methodology as described in the CJR model final rule. We determined that we would be able to meet this standard with 34 MSAs from the higher cost groups. We noted that we expect that hospitals in the higher cost MSAs will be able to achieve

similar 3-percent savings given their MSA's relatively high historic episode spending and thus greater opportunities for improvements, and their experience over the first 2 performance years of the CJR model. We noted that the proposed changes to the model, including the focus on higher cost MSAs and the reduced number of mandatory MSAs, would cause changes to the nature of the evaluation.

To select the 34 MSAs that would continue to have mandatory participation (except for low-volume and rural hospitals), we took the distribution of average wage-adjusted historic LEJR episode payments for the 67 MSAs using the definition described in the CJR model final rule, ordered them sequentially by average wage-adjusted historic LEJR episode payments, and then selected the 34 MSAs with the highest average payments. We noted that under the proposal to reduce the number of MSAs with mandatory participation, the remaining 33 MSAs would no longer be subject to the CJR model's mandatory participation requirements; that is, hospital participation would be voluntary in these 33 MSAs.

After dividing the 67 MSAs into 34 mandatory and 33 voluntary MSAs as described previously, we examined selected MSA characteristics. In order to determine whether a good balance was maintained across MSA population size, we examined the number of MSAs below and above the median population point of the 196 MSAs eligible for potential selection. We observed that a good balance of MSA population size was maintained (17 out of 34 mandatory and 17 out of 33 voluntary MSAs had a population above the median population). While the 34 MSAs that would continue to have mandatory participation have higher spending on average, these MSAs all include providers with average cost episodes in addition to providers with high cost episodes. In general, we noted that hospitals located in higher cost areas have a greater potential to demonstrate significant decreases in episode spending. However, within the higher cost MSAs, there was still significant variation in characteristics and experiences of the included hospitals. We anticipated that the evaluation would be able to assess the generalizability of the findings of the CJR model by examining variations of performance within the participating hospitals that represent a wide range of hospital and market characteristics. Therefore, we proposed that the CJR model would have 34 mandatory participation MSAs (identified in Table

1) and 33 voluntary participation MSAs (identified in Table 2) for performance years 3, 4, and 5.

Specifically, we proposed that, unless an exclusion in § 510.100(b) applies (that is, for certain hospitals that participate in the BPCI initiative), participant hospitals in the proposed 34 mandatory participation MSAs that are not low-volume or rural (as defined in § 510.2 and discussed in the following paragraphs) would continue to be required to participate in the CJR model. We also proposed that hospitals in the proposed 33 voluntary participation MSAs and hospitals that are low-volume or rural (as defined in § 510.2 and discussed in the following paragraphs) would have a one-time opportunity to notify CMS, in the form and manner specified by CMS, of their election to continue their participation in the CJR model on a voluntary basis (opt-in) for performance years 3, 4, and 5. We noted that hospitals that choose to participate in the CJR model and make a participation election that complies with proposed § 510.115 would be subject to all model requirements. Hospitals in the proposed 33 voluntary participation MSAs and low-volume and rural hospitals (as defined in § 510.2 and discussed in the following paragraphs) that do not make a participation election would be withdrawn from the CJR model as described later in this section of this final rule and interim final rule with comment period.

We proposed to exclude and automatically withdraw low-volume hospitals in the proposed 34 mandatory participation MSAs, as identified by CMS (see Table 3), from participation in the CJR model effective February 1, 2018. Since some low-volume hospitals may want to continue their participation in the CJR model, we proposed to allow low-volume hospitals to make a one-time, voluntary participation election that complies with the proposed § 510.115 in order for the low-volume hospital to continue its participation in the CJR model. We proposed to define a low-volume hospital in § 510.2 as a hospital identified by CMS as having fewer than 20 LEJR episodes in total across the 3 historical years of data used to calculate the performance year 1 CJR episode target prices. Note that under this definition, all hospitals listed in Table 3 would meet the definition of a low-volume hospital, but this list would not be inclusive of all hospitals that could be identified by CMS as a low-volume hospital. For example, a new hospital (with a new CCN) that opens in a mandatory MSA during the remaining years of the CJR model would not have

any LEJR episodes during the historical years of data used to calculate the performance year 1 CJR episode target prices. Under our proposal, we intended that any hospital with a new CCN that came into existence after the proposed voluntary participation election period would not be required or eligible to join the CJR model. We noted that our proposed policy for new hospitals would not be applicable in the case of a reorganization event where the remaining entity is a hospital with a CCN that was participating in the CJR model prior to the reorganization event; consistent with our current policy, such hospital would continue participation in the CJR model regardless of whether all predecessor hospitals were participant hospitals prior to the reorganization event.

We also proposed to exclude and automatically withdraw rural hospitals from participation in the CJR model effective February 1, 2018. Since some rural hospitals may want to continue their participation in the CJR model, we proposed to allow rural hospitals to make a one-time, voluntary participation election that complies with the proposed § 510.115 in order for the rural hospital to continue its participation in the CJR model. Specifically, we proposed that rural hospitals (as defined in § 510.2) with a CCN primary address in the 34 mandatory participation MSAs would have a one-time opportunity to opt-in to continue participation in the CJR model during the proposed voluntary participation election period. We proposed that a hospital's change in rural status after the end of the voluntary participation election period would not change the hospital's CJR model participation requirements. Specifically, we proposed that hospitals in the proposed 34 mandatory participation MSAs that are neither low-volume or rural hospitals during the proposed voluntary participation election period would be required to participate in the CJR model for performance years 3, 4, and 5, and that these hospitals would continue to be required to participate in the CJR model even if they subsequently become a rural hospital. Similarly, we proposed that a rural hospital that makes a voluntary participation election during the one-time opportunity would be required to continue participating in the CJR model if that hospital no longer meets the definition of rural hospital in § 510.2. We proposed this approach so that CMS could identify the hospitals, by CCN, that would participate in the model for the remainder of performance

year 3 and performance years 4 and 5 at the conclusion of the proposed voluntary participation election period and so that there would be less confusion about which hospitals are CJR model participants.

We also stated that we believe that our proposed approach to make the CJR model primarily concentrated in the higher cost MSAs where the opportunity for further efficiencies and care redesign may be more likely and to allow voluntary participation in the lower cost MSAs and for low-volume and rural hospitals allows the Innovation Center to focus on areas where the opportunity for further efficiencies and care redesign may be more likely, while still allowing hospitals in the voluntary MSAs the opportunity to participate in the model. In developing the proposed rule, we considered that hospitals in the CJR model had been participating for over a year and a half as of the timing of the proposed rule, and noted that we had begun to give hospitals in the model initial financial and quality results from the first performance year. In many cases, participant hospitals had made investments in care redesign, and we wanted to recognize such investments and commitments to improvement while reducing the overall number of hospitals that are required to participate. We also considered stakeholder feedback that suggested we make participation in the CJR model voluntary, and the model size necessary to detect at least a 3-percent reduction in LEJR episode spending. Taking these considerations into account, we considered whether revising the model to allow for voluntary participation in all, some, or none of the 67 selected MSAs would be feasible.

As discussed in section V. of this final rule and interim final rule with comment period (see 82 FR 39327 through 39331 for proposed rule impact estimates), the estimated impact of the changes to the CJR model we are finalizing in this final rule and interim final rule with comment period are estimated to reduce the overall estimated savings for performance years 3, 4, and 5 by \$106 million. An additional estimated \$2 million in reduced savings is estimated for the performance year 2 reconciliation that will occur in March of 2018 and will incorporate the extreme and uncontrollable circumstances policy we are putting into place in with the interim final rule with comment in this rule for a total reduction in the originally projected CJR model savings of \$108 million. If voluntary participation was allowed in all of the

67 selected MSAs, the overall estimated model impact would no longer show savings, and would likely result in additional costs to the Medicare program. If participation was limited to the proposed 34 mandatory participation MSAs and voluntary participation was not allowed in any MSA, the impact to the overall estimated model savings over the last 3 years of the model (excluding the impact of the extreme and uncontrollable circumstances policy in the interim final rule with comment period portion of this rule) would be closer to a reduction of \$45 million than the reduction of \$106 million estimate presented in section V. of this final rule, because our modeling, which does not include assumptions about behavioral changes that might lower fee-for-service spending, estimates that 60 to 80 hospitals will choose voluntary participation. Since we estimated that these potential voluntary participants would be expected to earn only positive reconciliation payments under the model, these positive reconciliation payments would offset some of the savings garnered from mandatory participants. However, as many current hospital participants in all of the 67 MSAs are actively invested in the CJR model, we proposed to allow voluntary participation in the 33 MSAs that were not selected for mandatory participation and for low-volume and rural hospitals.

We sought comment on this proposal.

Comment: Several commenters disagreed with our proposal to make CJR voluntary in certain MSAs. Commenters noted that in some cases, they believe their hospitals have reduced spending and improved quality of care as well as patient satisfaction as a result of mandated participation in CJR. A commenter stated that due to mandated participation in CJR, it is now more likely they will elect to participate in other voluntary initiatives in the future. Other commenters stated that the current model of mandatory participation in all 67 MSAs allows for more generalizable evaluation results, and that allowing for voluntary participation in half of the current MSAs will negatively impact the evaluation. Some believe the proposal to offer hospitals in approximately half of the geographic areas the option to opt-in to the model on a voluntary basis will incentivize patient selection (that is, select only healthier patients for LEJR procedures) and limit CMS' ability to improve beneficiary health and the financial viability of the Medicare program. Several commenters stated that the proposal would stifle innovation, resulting in providers

hesitating before engaging in further innovative payment efforts and incentivizing only high-performing hospitals to continue participation in the voluntary MSAs. A commenter wrote that they believe it is too early to limit the scope of the CJR model and that doing so will halt our ability to produce data on the impact of the model on quality and cost.

Response: We thank commenters for their responses. We continue to believe that by limiting the geographic areas in which CJR is mandatory at this time, we are encouraging innovation by reducing burden on providers to participate in models. We also believe that our proposal will not incentivize patient selection, as we will continue to monitor hospitals in CJR for changes in patient case-mix, and we are only allowing for a one-time opt-in for eligible hospitals. Hospitals that opt-in to the model, as discussed later in this section, will remain in CJR for the remaining 3 performance years and will not have the opportunity to later opt-out. In addition, all other current requirements of participation, such as notifying beneficiaries about the model, remain in place. We also note that we expect the CJR model to produce savings for the Medicare program, as detailed in section V. of this final rule, and to improve the quality of care provided to beneficiaries undergoing LEJR procedures. Providers in voluntary MSAs who have made investments and want to continue participating in CJR may do so by opting into the model. We also reiterate that we are considering options for a new bundled payment initiative, as discussed previously in section II.A. of this final rule, which could provide additional participation opportunities for providers currently in CJR, including low volume and rural providers, as well as hospitals located in voluntary MSAs, that choose not to opt-in to CJR. Finally, we believe that we will still be able to evaluate the CJR model, given these policy changes. After examining the remaining 34 mandatory MSAs, we observed that there remains significant variation in the types of markets and hospitals who will continue participation in the model across a broad representation of geographic regions. This wide variation in hospital and market characteristics will allow us to evaluate variations in impact and assess the generalizability of the findings of the CJR model. Additionally, the anticipated inclusion of hospitals in the voluntary MSAs who opt-in has a high likelihood of resulting in a robust data set for the evaluation of generalizability of findings in

mandatory areas that moved to voluntary participation.

Comment: Many commenters supported our proposal to make CJR voluntary in 33 MSAs and voluntary for all rural and low volume providers in CJR. However, several commenters requested we make CJR voluntary in all 67 MSAs, effectively removing any mandatory participation. Commenters opposed mandatory participation in payment models due to providers' differing levels of experience with risk and infrastructure capabilities and because some providers may not be well-positioned to take on financial risk for a specific patient population. Several commenters cited concerns with beneficiary access and the quality of patient care under mandatory initiatives. A commenter stated that mandatory models penalize providers that have not already participated in other voluntary initiatives like BPCI. Other commenters opposed mandatory models due to a belief that quality of care is more likely to improve when health providers actively choose to participate in payment models. Several commenters stated that under our proposal, physicians and other teams of providers in voluntary MSAs could still utilize the flexibility and resources under CJR to improve patient care and would be incentivized to do so.

Other commenters requested that CMS make the model voluntary in all MSAs across the country, not just those 67 currently participating in CJR, in order to increase participation opportunities in Advanced APMs and to treat hospitals in all 67 current CJR MSAs fairly by not mandating participation in some areas and not others. Several commenters noted support for our proposal to make CJR voluntary in certain areas, but requested that CMS clarify that our priorities still include delivery system reform given that our proposal would limit the reach of an existing model.

Response: We thank those commenters that supported the proposal. We note that although we are reducing the number of MSAs where participation in the CJR model is mandatory, we continue to believe that the CJR model offers opportunities for providers to improve the quality of care while reducing spending. We expect many providers in the voluntary MSAs to elect to continue participation in the CJR model, and look forward to continuing to work with all CJR participant hospitals to improve quality of care under the model. Delivery system reform and movement toward value-based payment remain CMS priorities; we believe offering more

opportunities for providers to engage in such activities on a voluntary basis will allow us to continue to pursue our goals.

We continue to believe that offering voluntary participation in 33 MSAs while maintaining mandatory participation in the remaining 34 MSAs is the correct path forward at this time. As discussed previously, we will continue to require hospitals in the 34 highest-cost MSAs to participate in CJR because we believe that those geographic areas have significant opportunity for reducing episode spending while improving quality of care under the model. Similarly, we believe that at this point in the CJR model (the end of the second performance year), it is most prudent for us to continue the model in the geographic areas where providers have already implemented infrastructure changes as well as received initial financial and quality results for the first performance year. In addition, as discussed previously, participation will remain mandatory in the 34 higher-cost MSAs where we believe there exists significant opportunity to reduce episode spending. In lieu of increasing the number of MSAs participating in CJR at this time, we are focusing our efforts on development of other new models that will further address our goals of improving quality of care and reducing spending.

Comment: Several commenters supported our proposal to make participation in CJR voluntary in some of the current MSAs but objected to our use of the high-cost criterion to determine which MSAs should remain mandatory. These commenters requested that we randomly select which MSAs would remain mandatory or include a mixture of high- and low-cost MSAs in the remaining mandatory areas.

Response: We thank the commenters for their suggestions but continue to believe that choosing the higher-cost MSAs for mandatory participation is appropriate, especially given the transition to fully regional pricing in performance years 4 and 5 of the CJR model. The higher-cost MSAs may offer more opportunity for hospitals in CJR to reduce episode spending and improve quality, especially as target prices move to fully regional prices in year 4 of the model.

Comment: A number of commenters supported our proposal to allow low volume hospitals in all 67 MSAs to participate in the model on a voluntary basis, but requested that we revise the low volume threshold to offer voluntary participation to a larger number of

hospitals. Commenters specifically requested we revise the threshold to 100 episodes across the 3-year historical baseline (episodes that began in 2012–2014), noting their belief that hospitals with fewer episodes have experienced more pricing volatility and have a more difficult time managing care redesign and episode spending under bundled payment models.

Response: We proposed to define low volume hospitals as those hospitals with fewer than 20 episodes in the 3-year historical baseline period (episodes in 2012 through 2014) used to create PY1 episode target prices. We note that this definition is consistent with our treatment of low volume hospitals currently participating in CJR; since the model's inception, under § 510.300(b)(3), such hospitals receive a 100 percent regional target price in all years of the model. This threshold represents approximately the 10th percentile of episode volume across hospitals, which we believed was a reasonable threshold. In addition, such hospitals are defined as low volume for purposes of the CJR model based only on their historical LEJR episode volume among Medicare FFS beneficiaries; while these hospitals may furnish few LEJR procedures to Medicare FFS beneficiaries, they are not necessarily rural or low volume in terms of bed count or the volume of other services provided. In response to commenters' suggestion to revise the threshold, we reexamined our data on episode volume across the historical baseline, as well as the initial performance year 1 reconciliation results.

We are finalizing our proposal to define low volume hospitals as those with fewer than 20 episodes in the historical baseline period for the following reasons. First, we note that a number of low volume hospitals earned initial reconciliation payments for performance year 1, indicating that having a low volume of episodes among Medicare FFS beneficiaries does not preclude a hospital from achieving care redesign and financial success under the model. Second, we are attempting to balance competing considerations, including not wanting to overburden

smaller providers, while still learning how these types of providers perform in an episode model like CJR. We will continue to operate CJR as a mandatory model in 34 MSAs so that we may better understand how providers who typically do not participate in voluntary models respond to an episode payment structure. In addition, small hospitals are currently underrepresented in voluntary Innovation Center models. Thus, we are particularly interested in learning about their experiences as participants so that, when we examine whether the statutory requirements for expansion are met for CJR, we can consider these experiences rather than assuming that the experience of larger hospitals can be simply applied to them. We believe that the current manner of defining low volume hospitals as those having fewer than 20 episodes strikes an appropriate balance between wanting to understand the experience of hospitals with different care patterns and populations while limiting unnecessary burden.

Comment: Commenters supported our proposal to make participation voluntary for rural hospitals in all 67 CJR MSAs. Commenters noted that our proposal to allow for voluntary participation in CJR for all rural hospitals recognizes the unique challenges that rural hospitals face, including more limited access to infrastructure.

Response: We thank the commenters for their support. We agree that rural hospitals face unique challenges related to caring for their patient populations and are finalizing our policy to allow rural hospitals in all 67 CJR MSAs to opt-in to continue participation in the model.

Comment: Several commenters requested that CMS clarify how the CJR regional target prices will change if the proposal is finalized.

Response: We are clarifying that regional targets will not change because they incorporate all lower-extremity joint replacement episodes in a U.S. Census Division, regardless of MSA and CJR participation.

Comment: A commenter requested clarification on the proposed CJR

participation requirements for hospitals currently participating in BPCI for LEJR episodes. The commenter noted that under our proposed policy, it was unclear whether a hospital participating in BPCI for LEJR episodes would enter CJR upon terminating participation on BPCI, or when the current BPCI initiative ends in September 2018. The commenter believes that requiring hospitals to enter CJR starting in the fourth performance year could expose them to undue financial risk, given that CJR will transition to fully regional pricing for performance years 4 and 5 of the model.

Response: We note that we did not propose any changes to the CJR participation requirements with relation to BPCI precedence. Hospitals that are participating in the BPCI initiative for LEJR episodes are not required to participate in CJR. We did not propose a special election period for BPCI hospitals that terminate from BPCI (or stop participating in LEJR episodes under that initiative). In other words, a hospital that terminates from BPCI after January 1, 2018 and that is located in a voluntary area or that qualified as a rural or low volume provider under the CJR definitions as of January 31, 2018 would not be required or able to participate in CJR. When BPCI concludes its final performance period, we will not offer a special election period. At that time, hospitals in mandatory CJR MSAs who do not qualify as rural or low volume under the CJR definitions must participate in CJR, as specified in § 510.100(b). Our expectation is that hospitals that have been participating in BPCI will have a smooth transition into CJR based on their experience in managing episodes under the BPCI model. Hospitals not in mandatory areas or hospitals that have rural or low volume status under the CJR definitions interested in participating in voluntary bundled payment models would have other opportunities to apply to do so, as discussed in section II.A. of this final rule and interim final rule with comment period.

TABLE 1—CJR MANDATORY PARTICIPATION MSAS

MSA	MSA name	Wage-adjusted episode payments (in \$)
10420	Akron, OH	\$28,081
11700	Asheville, NC	27,617
12420	Austin-Round Rock, TX	28,960
13140	Beaumont-Port Arthur, TX	32,544
17140	Cincinnati, OH-KY-IN	28,074
18580	Corpus Christi, TX	30,700

TABLE 1—CJR MANDATORY PARTICIPATION MSAs—Continued

MSA	MSA name	Wage-adjusted episode payments (in \$)
20020	Dothan, AL	30,710
22500	Florence, SC	27,901
23540	Gainesville, FL	29,370
24780	Greenville, NC	27,446
25420	Harrisburg-Carlisle, PA	28,360
26300	Hot Springs, AR	29,621
28660	Killeen-Temple, TX	27,355
31080	Los Angeles-Long Beach-Anaheim, CA	28,219
31180	Lubbock, TX	29,524
32820	Memphis, TN-MS-AR	28,916
33100	Miami-Fort Lauderdale-West Palm Beach, FL	33,072
33740	Monroe, LA	30,431
33860	Montgomery, AL	30,817
35300	New Haven-Milford, CT	27,529
35380	New Orleans-Metairie, LA	29,562
35620	New York-Newark-Jersey City, NY-NJ-PA	31,076
36420	Oklahoma City, OK	27,267
36740	Orlando-Kissimmee-Sanford, FL	29,259
37860	Pensacola-Ferry Pass-Brent, FL	29,485
38300	Pittsburgh, PA	30,886
38940	Port St. Lucie, FL	30,423
39340	Provo-Orem, UT	28,852
39740	Reading, PA	28,679
42680	Sebastian-Vero Beach, FL	28,015
45300	Tampa-St. Petersburg-Clearwater, FL	32,424
45780	Toledo, OH	28,658
46220	Tuscaloosa, AL	31,789
46340	Tyler, TX	30,955

TABLE 2—CJR VOLUNTARY PARTICIPATION MSAs

MSA	MSA name	Wage-adjusted episode payments (in \$)
10740	Albuquerque, NM	\$25,892
12020	Athens-Clarke County, GA	25,394
13900	Bismarck, ND	22,479
14500	Boulder, CO	24,115
15380	Buffalo-Cheektowaga-Niagara Falls, NY	26,037
16020	Cape Girardeau, MO-IL	24,564
16180	Carson City, NV	26,128
16740	Charlotte-Concord-Gastonia, NC-SC	26,736
17860	Columbia, MO	25,558
19500	Decatur, IL	24,846
19740	Denver-Aurora-Lakewood, CO	26,119
20500	Durham-Chapel Hill, NC	25,151
22420	Flint, MI	24,807
23580	Gainesville, GA	23,009
26900	Indianapolis-Carmel-Anderson, IN	25,841
28140	Kansas City, MO-KS	27,261
30700	Lincoln, NE	27,173
31540	Madison, WI	24,442
33340	Milwaukee-Waukesha-West Allis, WI	25,698
33700	Modesto, CA	24,819
34940	Naples-Immokalee-Marco Island, FL	27,120
34980	Nashville-Davidson—Murfreesboro—Franklin, TN	26,880
35980	Norwich-New London, CT	25,780
36260	Ogden-Clearfield, UT	25,472
38900	Portland-Vancouver-Hillsboro, OR-WA	22,604
40980	Saginaw, MI	25,488
41180	St. Louis, MO-IL	26,425
41860	San Francisco-Oakland-Hayward, CA	23,716
42660	Seattle-Tacoma-Bellevue, WA	23,669
43780	South Bend-Mishawaka, IN-MI	23,143
44420	Staunton-Waynesboro, VA	25,539
45820	Topeka, KS	24,273
48620	Wichita, KS	25,945

TABLE 3—LOW-VOLUME HOSPITALS LOCATED IN THE MANDATORY MSAs ELIGIBLE TO OPT-IN DURING VOLUNTARY ELECTION PERIOD

CCN	Hospital name	MSA	MSA title
010034	Community Hospital, Inc	33860	Montgomery, AL.
010062	Wiregrass Medical Center	20020	Dothan, AL.
010095	Hale County Hospital	46220	Tuscaloosa, AL.
010097	Elmore Community Hospital	33860	Montgomery, AL.
010108	Prattville Baptist Hospital	33860	Montgomery, AL.
010109	Pickens County Medical Center	46220	Tuscaloosa, AL.
010149	Baptist Medical Center East	33860	Montgomery, AL.
040132	Leo N. Levi National Arthritis Hospital	26300	Hot Springs, AR.
050040	LAC-Olive View-UCLA Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050091	Community Hospital of Huntington Park	31080	Los Angeles-Long Beach-Anaheim, CA.
050137	Kaiser Foundation Hospital-Panorama City	31080	Los Angeles-Long Beach-Anaheim, CA.
050138	Kaiser Foundation Hospital-Los Angeles	31080	Los Angeles-Long Beach-Anaheim, CA.
050139	Kaiser Foundation Hospital-Downey	31080	Los Angeles-Long Beach-Anaheim, CA.
050158	Encino Hospital Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050205	Glendora Community Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050373	LAC + USC Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050378	Pacifica Hospital of the Valley	31080	Los Angeles-Long Beach-Anaheim, CA.
050411	Kaiser Foundation Hospital-South Bay	31080	Los Angeles-Long Beach-Anaheim, CA.
050468	Memorial Hospital of Gardena	31080	Los Angeles-Long Beach-Anaheim, CA.
050543	College Hospital Costa Mesa	31080	Los Angeles-Long Beach-Anaheim, CA.
050548	Fairview Developmental Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050552	Motion Picture & Television Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050561	Kaiser Foundation Hospital-West Los Angeles	31080	Los Angeles-Long Beach-Anaheim, CA.
050609	Kaiser Foundation Hospital-Orange County-Anaheim	31080	Los Angeles-Long Beach-Anaheim, CA.
050641	East Los Angeles Doctors Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050677	Kaiser Foundation Hospital-Woodland Hills	31080	Los Angeles-Long Beach-Anaheim, CA.
050723	Kaiser Foundation Hospital-Baldwin Park	31080	Los Angeles-Long Beach-Anaheim, CA.
050738	Greater El Monte Community Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050744	Anaheim Global Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050747	South Coast Global Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050751	Miracle Mile Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050771	Coast Plaza Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050776	College Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050779	Martin Luther King Jr. Community Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
050780	Foothill Medical Center	31080	Los Angeles-Long Beach-Anaheim, CA.
050782	Casa Colina Hospital	31080	Los Angeles-Long Beach-Anaheim, CA.
070038	Connecticut Hospice Inc	35300	New Haven-Milford, CT.
070039	Masonic Home and Hospital	35300	New Haven-Milford, CT.
100048	Jay Hospital	37860	Pensacola-Ferry Pass-Brent, FL.
100130	Lakeside Medical Center	33100	Miami-Fort Lauderdale-West Palm Beach, FL.
100240	Anne Bates Leach Eye Hospital	33100	Miami-Fort Lauderdale-West Palm Beach, FL.
100277	Douglas Gardens Hospital	33100	Miami-Fort Lauderdale-West Palm Beach, FL.
100320	Poinciana Medical Center	36740	Orlando-Kissimmee-Sanford, FL.
100326	Promise Hospital of Miami	33100	Miami-Fort Lauderdale-West Palm Beach, FL.
190005	University Medical Center New Orleans	35380	New Orleans-Metairie, LA.
190011	University Health Conway	33740	Monroe, LA.
190079	St. Charles Parish Hospital	35380	New Orleans-Metairie, LA.
190245	Monroe Surgical Hospital	33740	Monroe, LA.
190300	St. Charles Surgical Hospital LLC	35380	New Orleans-Metairie, LA.
190302	Omega Hospital LLC	35380	New Orleans-Metairie, LA.
190308	St. Bernard Parish Hospital	35380	New Orleans-Metairie, LA.
190313	New Orleans East Hospital	35380	New Orleans-Metairie, LA.
250012	Alliance Healthcare System	32820	Memphis, TN-MS-AR.
250126	North Oak Regional Medical Center	32820	Memphis, TN-MS-AR.
250167	Methodist Olive Branch Hospital	32820	Memphis, TN-MS-AR.
310058	Bergen Regional Medical Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330080	Lincoln Medical & Mental Health Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330086	Montefiore Mount Vernon Hospital	35620	New York-Newark-Jersey City, NY-NJ-PA.
330100	New York Eye and Ear Infirmary	35620	New York-Newark-Jersey City, NY-NJ-PA.
330199	Metropolitan Hospital Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330231	Queens Hospital Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330233	Brookdale Hospital Medical Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330240	Harlem Hospital Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330385	North Central Bronx Hospital	35620	New York-Newark-Jersey City, NY-NJ-PA.
330396	Woodhull Medical and Mental Health Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330397	Interfaith Medical Center	35620	New York-Newark-Jersey City, NY-NJ-PA.
330399	St. Barnabas Hospital	35620	New York-Newark-Jersey City, NY-NJ-PA.
330405	Helen Hayes Hospital	35620	New York-Newark-Jersey City, NY-NJ-PA.
360241	Edwin Shaw Rehab Institute	10420	Akron, OH.
370011	Mercy Hospital El Reno Inc	36420	Oklahoma City, OK
370158	Purcell Municipal Hospital	36420	Oklahoma City, OK.

TABLE 3—LOW-VOLUME HOSPITALS LOCATED IN THE MANDATORY MSAs ELIGIBLE TO OPT-IN DURING VOLUNTARY ELECTION PERIOD—Continued

CCN	Hospital name	MSA	MSA title
370199	Lakeside Women's Hospital A Member of INTEGRIS Health.	36420	Oklahoma City, OK.
370206	Oklahoma Spine Hospital	36420	Oklahoma City, OK.
370215	Oklahoma Heart Hospital	36420	Oklahoma City, OK.
370234	Oklahoma Heart Hospital South	36420	Oklahoma City, OK.
390184	Highlands Hospital	38300	Pittsburgh, PA.
390217	Excelsa Health Frick Hospital	38300	Pittsburgh, PA.
420057	McLeod Medical Center-Darlington	22500	Florence, SC.
420066	Lake City Community Hospital	22500	Florence, SC.
440131	Baptist Memorial Hospital Tipton	32820	Memphis, TN-MS-AR.
450143	Seton Smithville Regional Hospital	12420	Austin-Round Rock, TX.
450605	Care Regional Medical Center	18580	Corpus Christi, TX.
450690	University of Texas Health Science Center at Tyler ...	46340	Tyler, TX.
450865	Seton Southwest Hospital	12420	Austin-Round Rock, TX.
460043	Orem Community Hospital	39340	Provo-Orem, UT.
670087	Baylor Scott & White Emergency Medical Center-Cedar Park.	12420	Austin-Round Rock, TX.

As stated previously in this section, we proposed a one-time participation election period for all hospitals with a CCN primary address located in the voluntary participation MSAs listed in Table 2, low-volume hospitals specified in Table 3, and rural hospitals. Based on the anticipated timing for when this final rule implementing this proposal would be published, we proposed that the voluntary participation election period would begin January 1, 2018, and would end January 31, 2018. We noted that we must receive the participation election letter no later than January 31, 2018. We proposed that the hospital's participation election letter would serve as the model participant agreement. Voluntary participation would begin February 1, 2018, and continue through the end of the CJR model, unless sooner terminated. Thus, participant hospitals located in the voluntary participation MSAs listed in Table 2, the low-volume hospitals specified in Table 3, and the rural hospitals that elect voluntary participation would continue in the CJR model without any disruption to episodes attributed to performance year 3, which begins January 1, 2018. Participant hospitals located in the voluntary participation MSAs listed in Table 2, the low-volume hospitals specified in Table 3, and the rural hospitals that do not elect voluntary participation would be withdrawn from the model effective February 1, 2018, and all of their performance year 3 episodes up to and including that date would be canceled, so that these hospitals would not be subject to a reconciliation payment or repayment amount for performance year 3. We proposed to implement our proposed opt-in approach in this manner as a way to balance several goals, including

establishing a uniform time period for hospitals to make a voluntary participation election, avoiding disruption of episodes for hospitals that elect to continue their participation in the CJR model, and preventing confusion about whether a hospital is participating in performance year 3 of the model. Specifically, we considered whether adopting a voluntary election period that ended prior to the start of performance year 3 would be less confusing and less administratively burdensome in terms of whether a hospital is participating in performance year 3. To implement this approach, the voluntary participation election period would have to close by December 31, 2017, such that each hospital would have made its determination regarding participation in performance year 3 before the start of performance year 3 (note that episodes attributed to performance year 3 would still be canceled under this alternative approach for eligible hospitals that do not make a participation election). We noted that because the voluntary election period under this approach would conclude in advance of the relevant CJR model performance year, this approach could simplify our administration of performance year 3 by establishing in advance of performance year 3 whether a hospital would be a participant hospital for the totality of performance year 3. However, given the timing of the proposed rulemaking, we were not confident that hospitals would have sufficient time to make a voluntary participation election by December 31, 2017. Thus, we proposed that the voluntary participation election period would occur during the first month of performance year 3 (that is, throughout January 2018) and would apply

prospectively beginning on February 1, 2018. We believed this approach would best ensure adequate time for hospitals to make a participation election while minimizing the time period during which participation in performance year 3 remains mandatory for all eligible hospitals in the 67 selected MSAs. We noted that based on timing considerations, including potential changes to the anticipated date of publication of the final rule and interim final rule with comment period, we may modify the dates of the voluntary participation election period and make conforming changes to the dates for voluntary participation in performance year 3. We sought comment on the proposed voluntary participation election period, including whether we should instead require the participation election to be made by December 31, 2017 (that is, prior to the start of performance year 3) or if a different or later voluntary election period may be preferable.

Comment: Some commenters requested that we establish multiple opt-in periods. Several commenters requested an additional opt-in period after we announce new voluntary bundled payment initiatives, while others requested an annual opt-in process. Commenters also noted that they believe hospitals in the voluntary MSAs, as well as low volume and rural hospitals, do not have enough information to make an informed decision about participation in CJR at this time due to the following reasons: (1) We have not yet released details of the next voluntary bundled payment initiative; (2) January 1 through 31, 2018 is too soon for hospitals to make an educated decision; (3) it is unclear what, if any, revisions will be made to the CJR

pricing methodology if we finalize the proposed OPPTS policy to remove total knee arthroplasty (TKA) from the inpatient-only (IPO) list; and (4) commenters believe that offering multiple opt-in periods will result in a great number of hospitals electing to remain in CJR.

Response: We appreciate commenters' concern that it may be more difficult for hospitals to make a participation decision during January 2018 given the uncertain factors that commenters provided. We understand that hospitals facing uncertainty for these reasons or others may choose not to opt-in based on that uncertainty. However, we believe that offering an opt-in period in January of 2018 is a reasonable timeframe, given the following reasons. First, hospitals opting-in to the model will have already been participants in CJR for nearly 2 years at that time. Participant hospitals have been receiving episode data and have received initial reconciliation results, and in many cases an initial reconciliation payment, for the first performance year of CJR. Second, as discussed in section II.I. of this final rule and interim final rule with comment period, we plan to address commenters' concerns about the potential impact of the removal of TKA from the IPO list in future rulemaking, as appropriate. Finally, we believe that a one-time opt-in process minimizes potential patient selection and gaming issues, as an annual opt-in process may result in hospitals only opting-in to the model if they are earning reconciliation payments. We also believe that a one-time opt-in process reduces confusion for hospitals regarding participation in the CJR model. We will publish a list on the CMS Web site of all hospitals participating in the CJR model for performance years 3 through 5 as of February 1, 2018. Therefore, we are finalizing our proposal to offer a one-time opt-in period for all participant hospitals in the 33 voluntary MSAs and rural and low volume hospitals in all 67 MSAs. In conjunction with the publication of this final rule and interim final rule with comment period, we will post on our Web site the list of rural hospitals we have identified as rural that will be automatically excluded from the CJR model if they do not submit an opt-in election as specified in this final rule and interim final rule with comment period. CJR hospitals not shown on this list who believe they should be considered rural should contact the CJR model at CJR@cms.hhs.gov.

Comment: A commenter was concerned about how the opt-in process

would affect hospitals that have submitted a rural reclassification request prior to January 31, 2018 that has not yet been approved by CMS. The commenter requested that CMS notify all current CJR hospitals about the opt-in process, use the date the reclassification request was submitted to CMS to determine whether a hospital is rural, and offer a 30-day appeals process for hospitals with pending rural reclassification requests.

Response: We appreciate the commenter's recognition of the operational challenges involved in identifying which hospitals are rural hospitals for purposes of the model. For this reason, we proposed that we would consider a hospital's rural status as of January 31, 2018 for purposes of determining which hospitals are required to participate in CJR or are eligible for voluntary participation. We proposed, and are now notifying all CJR hospitals (and the public in general) about, the opt-in process. We also have included information about the proposed process, which we are now finalizing, in communications with current CJR participant hospitals. We do not believe it is appropriate, or in the best interest of rural hospitals, to offer an appeals process or additional opt-in periods for hospitals that reclassify to rural status, for the following reasons. First, we seek to minimize confusion as to which hospitals are in CJR and to avoid creating further incentives for hospitals to reclassify for reasons solely related to the CJR model. Second, any participant hospitals that are not reclassified as rural as of January 31, 2018 will have been participating in the CJR model since April 1, 2016 without rural status. Finally, participant hospitals have already had an incentive under the model to reclassify to rural, given that the CJR model has offered more limited financial risk for rural hospitals through lower stop-loss limits since downside risk began in year 2. We note that any participant hospital that reclassifies to rural after the opt-in period would have lower stop-loss limits for the remainder of the model. Thus, to more effectively operate the model, and to make it clear which hospitals will remain in CJR for performance years 3 through 5, we are finalizing our proposal to define rural hospitals for purposes of the model as those hospitals that have rural status as of the final day of the voluntary participation election period (January 31, 2018).

To specify their participation election, we proposed that hospitals would submit a written participation election letter to CMS in a form and manner

specified by CMS. We noted that we intend to provide templates that can easily be completed and submitted in order to limit the burden on hospitals seeking to opt-in. If a hospital with a CCN primary address located in the voluntary participation MSAs or a low-volume or rural hospital in the mandatory participation MSAs does not submit a written participation election letter by January 31, 2018, the hospital's participation in performance year 3 would end, all of its performance year 3 episodes would be canceled, and it would not be included in the CJR model for performance years 4 and 5.

We proposed a number of requirements for the participation election letter and that the hospital's participation election letter would serve as the model participant agreement. First, we proposed that the participation election letter must include all of the following:

- Hospital Name.
- Hospital Address.
- Hospital CCN.
- Hospital contact name, telephone number, and email address.
- If selecting the Advanced APM track, attestation of CEHRT use as defined in § 414.1305.

Second, we proposed that the participation election letter must include a certification in a form and manner specific by CMS that—

- The hospital will comply with all requirements of the CJR model (that is, 42 CFR part 510) and all other laws and regulations that are applicable to its participation in the CJR model; and
- Any data or information submitted to CMS will be accurate, complete and truthful, including, but not limited to, the participation election letter and any quality data or other information that CMS uses in reconciliation processes or payment calculations or both.

We solicited feedback on this proposed certification requirement, including whether the certification should include different or additional attestations.

Finally, we proposed that the participation election letter be signed by the hospital administrator, chief financial officer (CFO) or chief executive officer (CEO).

We proposed that, if the hospital's participation election letter meets these criteria, we would accept the hospital's participation election. Once a participation election for the CJR model is made and is effective, the participant hospital would be required to participate in all activities related to the CJR model for the remainder of the CJR model unless the hospital's participation is terminated sooner.

Comment: Several commenters requested that we make the opt-in template available as soon as possible, and that the template be clear and concise, minimizing the administrative burden on hospitals and limiting confusion.

Response: We are finalizing the proposed elements of the participation election letter with one modification. We will not require hospitals to attest to CEHRT use in the opt-in template, as we currently request that information from hospitals on an annual basis, along with their clinician financial arrangements list, when they elect a track in CJR for purposes of Advanced APM status consistent with § 510.120. In order to minimize burden and limit confusion for hospitals as to whether attesting to CEHRT use in the opt-in template would supersede other information provided to use regarding CEHRT use, we are removing that item from the opt-in template. We note that the opt-in template for hospitals eligible for voluntary participation in CJR has been posted on the CMS public Web site at <https://innovation.cms.gov/initiatives/cjr> in conjunction with this final rule and interim final rule with comment period.

We noted that episodes end 90 days after discharge for the CJR model and episodes that do not start and end in the same calendar year will be attributed to the following performance year. For example, episodes that start in October 2017 and do not end on or before December 31, 2017 are attributed to performance year 3. Our methodology for attributing these episodes to the subsequent performance year would be problematic in cases where a hospital with a CEN primary address located in a voluntary participation MSA or a rural hospital or a low-volume hospital, as specified by CMS, has not elected to voluntarily continue participating in the model. Therefore, for a hospital with a CEN primary address located in a voluntary participation MSA, or a rural hospital or a low-volume hospital, as specified by CMS, that does not elect voluntary participation during the one-time voluntary participation election period, we proposed that all episodes attributed to performance year 3 for that

hospital would be canceled and would not be included in payment reconciliation. Such hospitals would have their participation in the CJR model withdrawn effective February 1, 2018. We noted that this proposal is consistent with our policy for treatment of episodes that have not ended by or on the last day of performance year 5 and cannot be included in performance year 5 reconciliation due to the end of the model (see Table 8 of the CJR model final rule (80 FR 73326)).

We stated that we believe our proposed opt-in approach to allow for voluntary participation in the CJR model by certain hospitals would be less burdensome on such hospitals than a potential alternative approach of requiring hospitals to opt-out of the model. In developing the proposal to allow eligible hospitals located in the proposed 33 voluntary participation MSAs and low-volume and rural hospitals located in the 34 mandatory participation MSAs to elect voluntary participation, we considered whether to propose that hospitals would have to make an affirmative voluntary participation election (that is, an opt-in approach) or to propose that these hospitals would continue to be required to participate in the CJR model unless written notification was given to CMS to withdraw the hospital from the CJR model (that is, an opt-out approach). We stated that we believe an opt-in approach would be less burdensome on hospitals, because it would not require participation in the CJR model for hospitals located in the proposed 33 voluntary participation MSAs and for low-volume and rural hospitals located in the 34 mandatory participation MSAs unless the hospital affirmatively chose it. Further, we stated that we believe requiring an affirmative opt-in election would result in less ambiguity about a hospital's participation intentions as compared to an opt-out approach. Specifically, with an opt-in approach, a hospital's participation election would document each hospital's choice, whereas under an opt-out approach there could be instances where hospitals fail to timely notify CMS of their desire to withdraw from participation and are thus included in the model and subject

to potential repayment amounts. For these reasons, we proposed an opt-in approach. We sought comment on this proposal and the alternative considered.

Comment: A commenter requested that CMS clarify whether hospitals are allowed to terminate participation in CJR. The commenter noted that although our proposal for the opt-in process is clear, the language in the proposed rule does not clearly state whether a hospital could opt-in to CJR and later opt-out of the model after January 2018. Another commenter requested clarification as to whether a hospital that opts-in to CJR may later withdraw from the model through participation in a new voluntary bundled payment initiative.

Response: Under our proposed policy, all hospitals that opt-in to the model as of January 31, 2018 would be required to participate through the end of performance year 5 (episodes that end by December 31, 2020), unless such participation were terminated in accordance with § 510.410 or § 510.900, regardless of the hospital's participation in a new voluntary bundled payment initiative.

A summary of the finalized changes to the CJR model participation requirements is shown in Table 4.

Summary of Final Decisions: We are finalizing our proposals to reduce the number of MSAs where all IPPS hospitals are required to participate in CJR from 67 to 34, and to allow for voluntary participation for all IPPS participant hospitals in the remaining 33 MSAs. We are also finalizing our proposal that rural hospitals (as defined at § 510.2 as of January 31, 2018) and low volume hospitals, defined as hospitals with fewer than 20 episodes in the historical baseline period used to create the PY1 target prices, in the 34 mandatory participation MSAs are not required to participate in the model but may opt-in to the model. We are finalizing our proposal to offer a single opt-in period from January 1, 2018 through January 31, 2018. Table 4 provides a summary of our final participation requirements.

These policies are codified at §§ 510.2, 510.105, and 510.115.

TABLE 4—PARTICIPATION REQUIREMENTS FOR HOSPITALS IN THE CJR MODEL

	Required to participate as of February 1, 2018	May elect voluntary participation	Participation election period	Election effective date
Mandatory Participation MSAs				
All IPPS participant hospitals, except rural and low-volume *	Yes	No	n/a	n/a
Rural hospitals *	No	Yes	1/1/2018–1/31/2018	2/1/2018

TABLE 4—PARTICIPATION REQUIREMENTS FOR HOSPITALS IN THE CJR MODEL—Continued

	Required to participate as of February 1, 2018	May elect voluntary participation	Participation election period	Election effective date
Low-volume hospitals (see Table 3)	No	Yes	1/1/2018–1/31/2018	2/1/2018
Voluntary Participation MSAs				
All IPPS participant hospitals	No	Yes	1/1/2018–1/31/2018	2/1/2018

* **Note:** Participation requirements are based on the CCN status of the hospital as of January 31, 2018. A change in rural status after the voluntary election period does not affect the participation requirements.

2. Proposed Codification of CJR Model-Related Evaluation Participation Requirements

We note that for the CJR model evaluation, the data collection methods and key evaluation research questions under the proposed reformulated approach (that is, the proposal for voluntary opt-in elections discussed in section III.B.1. of the proposed rule (82 FR 39313)) would remain similar to the approach presented in the CJR model final rule. The evaluation methodology for the CJR model would be consistent with the standard Innovation Center approaches we have taken in other voluntary models such as the Pioneer Accountable Care Organization (ACO) Model. Cooperation and participation in model-related activities by all hospitals that participate in the CJR model would continue to be extremely important to the evaluation. Therefore, with respect to model-related evaluation activities, we proposed to add provisions in § 510.410(b)(1)(i)(G) to specify that CMS may take remedial action if a participant hospital, or one of its collaborators, collaboration agents, or downstream collaboration agents fails to participate in model-related evaluation activities conducted by CMS and/or its contractors for any performance year in which the hospital participates. We noted that we believe the addition of this provision would make participation and collaboration requirements for the CJR model evaluation clear to all participant hospitals and in particular to hospitals that are eligible to elect voluntary participation. We sought comment on our proposed regulatory change.

Comment: A commenter requested clarification on our proposal, including how CMS will monitor hospitals for compliance, what the remedial actions will be, and if the evaluation requirements apply to collaborators as well.

Response: In order to monitor whether hospitals comply with the model's evaluation requirements, we may do so through our existing

monitoring activities, which include data analysis and other methods such as site visits and interviews, or through other methods. Under the existing CJR model regulations, we have numerous remedial actions available to us, should a hospital fail to comply with any of the model requirements. We believe that our ability to evaluate the CJR model is a crucial aspect of the model test, and therefore we are finalizing our proposal to add provisions to § 510.410(b)(1)(i)(G) to specify that we may take remedial action if a CJR participant hospital, collaborator, collaboration agent, or downstream collaboration agent fails to comply with model-related evaluation activities. We refer readers to section § 510.410(b)(2) of the CJR regulations for a list of potential remedial actions. Finally, we note that our regulations at § 510.410 state that model requirements such as the addition of evaluation requirements apply to CJR collaborators as well as participant hospitals.

3. Comment Solicitation: Incentivizing Participation in the CJR Model

In the August 17, 2017 proposed rule (82 FR 39310 through 39333), we proposed to make participation in the CJR model voluntary in 33 MSAs and for low-volume and rural hospitals in the remaining 34 MSAs via the proposed opt-in election policy discussed in section III.B.1 of the proposed rule (82 FR 39313). In order to keep hospitals in all MSAs selected for participation in the CJR model actively participating in the model, we solicited comment on ways to further incentivize eligible hospitals to elect to continue participating in the CJR model for the remaining years of the model and to further incentivize all participant hospitals to advance care improvements, innovation, and quality for beneficiaries throughout LEJR episodes.

Comment: Commenters suggested a variety of ways that CMS could incentivize participation in the CJR model, and in bundled payment models in general, including: Allowing convener organizations, including

medical device manufacturers, to participate in CJR; limiting model participation to entities that provide direct patient care; reducing the regional component of CJR target prices in performance years 3 through 5 of the model; setting target prices at the higher of the hospital-specific or regional amount; using MSAs instead of U.S. Census Divisions to establish regional pricing; avoiding rebasing prices near the beginning of the model; limiting the use of a national trend factor to avoid penalizing hospitals that have reduced episode spending under models like BPCI; including reconciliation and repayment amounts in target prices; including risk adjustment in the pricing methodology, including adjustment for socioeconomic factors; allowing gainsharing on a more frequent basis; excluding further procedures and diagnoses, such as cancer, from CJR model episodes; altering the pricing structure to ensure that high-performing hospitals are incentivized to remain in the model as it moves to regional pricing and baseline years are updated to include later years; allow hospitals to choose when they enter downside risk; annually evaluating whether models should include outpatient procedures; changing precedence rules to level the playing field for hospitals; broadening CJR to allow other entities such as physicians and non-IPPS providers such as inpatient rehabilitation facilities to initiate episodes and bear direct financial risk for episode spending; offering waivers of certain IRF payment policies to allow for additional flexibilities for post-acute care providers; and releasing baseline data and target prices in advance of model start dates.

Response: We thank the commenters for their suggestions to incentivize participation in CJR and in bundled payment models in general. We note that we have considered and discussed some of these suggestions and issues in prior rulemaking that established the CJR model regulations (see 80 FR 73273). We will continue to consider

these options raised by commenters as we move forward with CJR and other models.

Additionally, we noted in the August 17, 2017 proposed rule that, under the CJR refinements established in the January 3, 2017 EPM final rule, the total amount of gainsharing payments for a performance year paid to physicians, non-physician practitioners, physician group practices (PGPs), and non-physician practitioner group practices (NPPGPs) must not exceed 50 percent of the total Medicare approved amounts under the Physician Fee Schedule for items and services that are furnished to beneficiaries during episodes that occurred during the same performance year for which the CJR participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made (§ 510.500(c)(4)). Distribution payments to these individuals and entities are similarly limited as specified in § 510.505(b)(8), and downstream distribution payments are similarly limited as specified in § 510.506(b)(8). These program integrity safeguards, which are consistent with the gainsharing caps in other Innovation Center models, were included to avoid setting an inappropriate financial incentive that may result in stinting, steering or denial of medically necessary care (80 FR 73415 and 73416). While we did not propose in the August 17, 2017 proposed rule any changes to the gainsharing caps for these models, we noted that we had heard various opinions from stakeholders, including the Medicare Payment Advisory Commission (MedPAC), on the relative benefit of such limitations on gainsharing and in the proposed rule we solicited comment on this requirement and any alternative gainsharing caps that may be appropriate to apply to physicians, non-physician practitioners, PGPs, and NPPGPs.

Comment: Several commenters supported the current 50 percent gainsharing cap. Other commenters offered a variety of recommendations for changing the gainsharing limitations, including: Increasing the frequency of gainsharing payments from hospitals to collaborators; increasing the gainsharing cap on physicians, non-physician practitioners, PGPs, and NPPGPs to 70 percent; granting hospitals increased flexibility in designing their respective gainsharing programs and determining the amount of savings to share with their collaborators; removing all gainsharing limits, noting that when surgeons coordinate with the hospital to provide efficient, high-quality care that decreases cost, they should be able to

fully share in the resulting cost reductions; providing more clarity on the applicability of the gainsharing policy; and coordinating unified guidance from CMS and the HHS Office of the Inspector General (OIG) relating to gainsharing and the model's fraud and abuse waivers, as well as providing a mechanism for hospitals to ask questions about the model's waivers.

Response: We thank the commenters for their suggestions regarding gainsharing limitations and alternative gainsharing caps. We will continue to consider these issues raised by commenters as we move forward with CJR and other models.

Comments on the waivers of fraud and abuse laws for the CJR model are beyond the scope of this rulemaking. Fraud and abuse waivers issued in connection with the CJR model are available at <https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Fraud-and-Abuse-Waivers.html> and on the OIG's Web site. No waivers of any fraud and abuse authorities are being issued in this final rule.

C. Maintaining ICD–CM Codes for Quality Measures

In the CJR model final rule (80 FR 73474), we discussed how specific International Classification of Diseases (ICD)—Clinical Modifications (CM) procedure codes define group of procedures included in the Hospital-level risk-standardized complication rate (RSCR) following elective primary total hip arthroplasty (THA) and/or total knee arthroplasty (TKA) (NQF #1550) (Hip/Knee Complications) measure. In discussing quality measures in general, the ICD–CM codes relative to defining a measure cohort are updated annually and are subject to change. For example, in the EPM final rule (82 FR 389), we itemized specific ICD–9–CM and ICD–10–CM codes for Hip/Knee Complications measure. As quality measures are refined and maintained, the ICD–CM code values used to identify the relevant diagnosis and/or procedures included in quality measures can be updated. For example, CMS' Center for Clinical Standards and Quality (CCSQ) has recently updated the list of ICD–10 codes used to identify procedures included in the Hip/Knee Complications measure. We did not intend for our preamble discussions of certain ICD–CM codes used, for example, to identify procedures included in the Hip/Knee Complications measures, and therefore the PRO cohorts for the CJR model, to set a policy that would define the relevant cohorts for the entirety of the

CJR model. We should have also directed readers to look for the most current codes on the CMS quality Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Measure-Methodology.html>. To ensure that model participants are aware of periodic ICD–CM code updates to the Hip/Knee Complications measure, we proposed to clarify that participants must use the applicable ICD–CM code set that is updated and released to the public each calendar year in April by CCSQ and posted on the Hospital Quality Initiative Measure Methodology Web site (<https://www.cms.gov/medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Measure-Methodology.html>) for purposes of reporting each of those measures.

CMS relies on the National Quality Forum (NQF) measure maintenance update and review processes to update substantive aspects of measures every 3 years. Through NQF's measure maintenance process, NQF endorsed measures are sometimes updated to incorporate changes that we believe do not substantially change the nature of the measures. Examples of such changes include updated diagnosis or procedures codes, changes to patient population, definitions, or extension of the measure endorsement to apply to other settings. We believe these types of maintenance changes are distinct from more substantive changes and do not require the use of the agency's regulatory process used to update more detailed aspects of quality measures.

Final Decision: We did not receive any comments regarding this section. Therefore, we are finalizing the proposal without modification.

D. Clarification of CJR Reconciliation Following Hospital Reorganization Event

In the CJR model final rule (80 FR 73348) rule, we discussed our method of setting target prices using all historical episodes that would represent our best estimate of historical volume and payments for participant hospitals when an acquisition, merger, divestiture, or other reorganization results in a hospital with a new CCN. When a reorganization event occurs during a performance year, CMS updates the quality-adjusted episode target prices for the new or surviving participant hospital (§ 510.300(b)(4)). Following the end of a performance year, CMS performs annual reconciliation calculations in accordance with the provisions established in § 510.305. The annual reconciliation calculations are specific

to the episodes attributable to each participant hospital entity for that performance year. The applicable quality-adjusted episode target price for such episodes is the quality-adjusted episode target price that applies to the episode type as of the anchor hospitalization admission date (§ 510.300(a)(3)). For example, if during a performance year, two participant hospitals (Hospital A and Hospital B) merge under the CCN of one of those two participant hospital's CCN (Hospital B's CCN), (assuming no other considerations apply) three initial (and three subsequent) annual reconciliation calculations for that performance year are performed: An initial (and subsequent) reconciliation for Hospital A for the episodes where the anchor hospitalization admission occurred prior to the merger (as determined by the CCN on the IPPS claim), using Hospital A's episode target price for that time period; an initial (and subsequent) reconciliation for Hospital B for the episodes where anchor hospitalization admission occurred before the merger (as determined by the CCN on the IPPS claim), using Hospital B's episode target price for that time period; and an initial (and subsequent) reconciliation for the post-merger entity (merged Hospitals A and B) for the episodes where anchor hospitalization admission occurred on or after the merger's effective date, using the episode target price for that time period. Reorganization events that involve a CJR participant hospital and a hospital that is not participating in the CJR model and result in the new organization operating under the CJR participant hospital's CCN, would not affect the reconciliation for the CJR participant hospital for episodes that initiate before the effective date of the reorganization event. Episodes that initiate after such reorganization event would be subject to an updated quality-adjusted episode target price that is based on historical episodes for the CJR participant hospital which would include historical episode expenditures for all hospitals that are integrated under the surviving CCN. These policies have been in effect since the start of the CJR model on April 1, 2016. To further clarify this policy for the CJR model, we proposed to add a provision specifying that separate reconciliation calculations are performed for episodes that occur before and after a reorganization that results in a hospital with a new CCN at § 510.305(d)(1). We noted that we believe this clarification would increase transparency and understanding of the

payment reconciliation processes for the CJR model. We sought comment on this proposal.

Comment: We received no comments on our proposal.

Response: We will finalize this proposal without modification. We will continue to perform two reconciliation calculations for hospitals that undergo a merger, consistent with our existing regulations.

E. Proposed Adjustment to the Pricing Calculation for the CJR Telehealth HCPCS Codes To Include the Facility PE Values

In the CJR model final rule (80 FR 73450), we established 9 HCPCS G-codes to report home telehealth evaluation and management (E/M) visits furnished under the CJR telehealth waiver as displayed in Table 5. These codes have been payable for CJR model beneficiaries since the CJR model began on April 1, 2016. Pricing for these 9 codes is updated each calendar year to reflect the work and malpractice (MP) relative value units (RVUs) for the comparable office and other outpatient E/M visit codes on the Medicare Physician Fee Schedule (MPFS). As we stated in the CJR model final rule (80 FR 73450), in finalizing this pricing method for these codes, we did not include the practice expense (PE) RVUs of the comparable office and other outpatient E/M visit codes in the payment rate for these unique CJR model services, based on the belief that practice expenses incurred to furnish these services are marginal or are paid for through other MPFS services. However, since the publication of the CJR model final rule, stakeholders have expressed concern that the zero value assigned to the PE RVUs for these codes results in inaccurate pricing. Stakeholders assert that there are additional costs related to the delivery of telehealth services under the CJR model such as maintaining the telecommunications equipment, software and security and that, while these practice expense costs are not equivalent to in-person service delivery costs, they are greater than zero. In considering the pricing concerns voiced by stakeholders, we recognized that there are resource costs in practice expense for telehealth services furnished remotely. However, we did not believe the current PE methodology and data accurately accounted for these costs relative to the PE resource costs for other services. This belief previously led us to assign zero PE RVUs in valuing these services, but because we

recognized that there are some costs that were not being accounted for by the current pricing for these CJR model codes, we believed an alternative to assigning zero PE RVUs would be to use the facility PE RVUs for the analogous in-person services. While we acknowledged that assigning the facility PE RVUs would not provide a perfect reflection of practice resource costs for remote telehealth services under the CJR model, in the absence of more specific information, we believed it was likely a better proxy for such PE costs than zero. Therefore, we proposed to use the facility PE RVUs for the analogous services in pricing the 9 CJR HCPCS G codes shown in Table 5. Additionally, we proposed to revise § 510.605(c)(2) to reflect the addition of the RVUs for comparable codes for the facility PE to the work and MP RVUs we are currently using for the basis for payment of the CJR telehealth waiver G codes.

Comment: Commenters supported CMS' proposal to assign facility PE RVUs to the telehealth codes utilized under the CJR model, stating that our proposal acknowledges the additional infrastructure and care coordination costs associated with providing telehealth services and supports increasing the use of telemedicine for Medicare beneficiaries. A commenter requested that CMS allow physical therapists to furnish telehealth services under CJR. Another commenter requested that CMS develop a demonstration to test whether capitated payments may increase the utilization of telehealth services.

Response: We thank the commenters for their support of our proposed policy. We note that we did not propose to make any changes to the regulations regarding providers and suppliers that may furnish telehealth services under CJR. We agree that, while the PE values are not a perfect representation of the overhead costs associated with furnishing telehealth services, they are a reasonable approximation of the care coordination and infrastructure costs. We are finalizing our proposed policy to use the facility PE RVUs for analogous services when pricing the 9 HCPCS G-codes used for telehealth services under the CJR model. We also thank commenters for their suggestions around incentivizing the use of telehealth more generally.

This policy is codified in the regulations at § 510.605 (which we inadvertently referred to as § 510.65 in the proposed rule).

TABLE 5—HCPCS CODES FOR TELEHEALTH VISITS FOR CJR MODEL BENEFICIARIES IN HOME OR PLACE OF RESIDENCE

HCPCS Code No.	Long descriptor	Short descriptor	Work and MP RVUs equal to those of the corresponding office/outpatient E/M visit CPT code for same calendar year under the PFS; PE RVUs equal to the facility values for each
G9481	Remote in-home visit for the evaluation and management of a new patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires these 3 key components: <ul style="list-style-type: none"> • A problem focused history. • A problem focused examination. • Straightforward medical decision making, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified health-care professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are self-limited or minor. Typically, 10 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology.	Remote E/M new pt 10 mins ...	99201
G9482	Remote in-home visit for the evaluation and management of a new patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires these 3 key components: <ul style="list-style-type: none"> • An expanded problem focused history. • An expanded problem focused examination. • Straightforward medical decision-making, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of low to moderate severity. Typically, 20 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M new pt 20 mins ...	99202
G9483	Remote in-home visit for the evaluation and management of a new patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires these 3 key components: <ul style="list-style-type: none"> • A detailed history. • A detailed examination. • Medical decision making of low complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of moderate severity. Typically, 30 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M new pt 30 mins ...	99203
G9484	Remote in-home visit for the evaluation and management of a new patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires these 3 key components:	Remote E/M new pt 45 mins ...	99204

TABLE 5—HCPCS CODES FOR TELEHEALTH VISITS FOR CJR MODEL BENEFICIARIES IN HOME OR PLACE OF RESIDENCE—Continued

HCPCS Code No.	Long descriptor	Short descriptor	Work and MP RVUs equal to those of the corresponding office/outpatient E/M visit CPT code for same calendar year under the PFS; PE RVUs equal to the facility values for each
G9485	<ul style="list-style-type: none"> • A comprehensive history. • A comprehensive examination. • Medical decision making of moderate complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of moderate to high severity. Typically, 45 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. Remote in-home visit for the evaluation and management of a new patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires these 3 key components: <ul style="list-style-type: none"> • A comprehensive history. • A comprehensive examination. • Medical decision making of high complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of moderate to high severity. Typically, 60 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M new pt 60 mins ...	99205
G9486	Remote in-home visit for the evaluation and management of an established patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires at least 2 of the following 3 key components: <ul style="list-style-type: none"> • A problem focused history. • A problem focused examination. • Straightforward medical decision making, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are self limited or minor. Typically, 10 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M est. pt 10 mins	99212
G9487	Remote in-home visit for the evaluation and management of an established patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires at least 2 of the following 3 key components:	Remote E/M est. pt 15 mins	99213

TABLE 5—HCPCS CODES FOR TELEHEALTH VISITS FOR CJR MODEL BENEFICIARIES IN HOME OR PLACE OF RESIDENCE—Continued

HCPCS Code No.	Long descriptor	Short descriptor	Work and MP RVUs equal to those of the corresponding office/outpatient E/M visit CPT code for same calendar year under the PFS; PE RVUs equal to the facility values for each
G9488	<ul style="list-style-type: none"> • An expanded problem focused history. • An expanded problem focused examination. • Medical decision making of low complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of low to moderate severity. Typically, 15 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. <p>Remote in-home visit for the evaluation and management of an established patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires at least 2 of the following 3 key components:</p> <ul style="list-style-type: none"> • A detailed history. • A detailed examination. • Medical decision making of moderate complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of moderate to high severity. Typically, 25 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M est. pt 25 mins	99214
G9489	<p>Remote in-home visit for the evaluation and management of an established patient for use only in the Medicare-approved Comprehensive Care for Joint Replacement model, which requires at least 2 of the following 3 key components:</p> <ul style="list-style-type: none"> • A comprehensive history. • A comprehensive examination. • Medical decision making of high complexity, furnished in real time using interactive audio and video technology. Counseling and coordination of care with other physicians, other qualified healthcare professionals or agencies are provided consistent with the nature of the problem(s) and the needs of the patient or the family or both. Usually, the presenting problem(s) are of moderate to high severity. Typically, 40 minutes are spent with the patient or family or both via real time, audio and video intercommunications technology. 	Remote E/M est. pt 40 mins	99215

F. Clinician Engagement Lists

1. Background for Submission of Clinician Engagement Lists

Under the Quality Payment Program, the Advanced APM track of the CJR model does not include eligible clinicians on a Participation List; rather the CJR Advanced APM track currently includes eligible clinicians on an Affiliated Practitioner List as defined under § 414.1305 and described under

§ 414.1425(a)(2) of the agency's Quality Payment Program regulations. As such, the Affiliated Practitioner List for the CJR model is the "CMS-maintained list" of eligible clinicians that have "a contractual relationship with the Advanced APM Entity [for CJR, the participant hospital] for the purposes of supporting the Advanced APM Entity's quality or cost goals under the Advanced APM." As specified in our regulations at § 414.1425(a)(2), CMS will

use this list to identify the eligible clinicians who will be assessed as Qualifying APM Participants (QPs) for the year. CMS will make QP determinations individually for these eligible clinicians as specified in §§ 414.1425(b)(2), (c)(4), and 414.1435.

In the EPM final rule, we stated that a list of physicians, nonphysician practitioners, or therapists in a sharing arrangement, distribution arrangement, or downstream distribution

arrangement, as applicable, would be considered an Affiliated Practitioner List of eligible clinicians who are affiliated with and support the Advanced APM Entity in its participation in the Advanced APM for purposes of the Quality Payment Program. An in-depth discussion of how the clinician financial arrangement list is considered an Affiliated Practitioner List can be found in section V.O. of the EPM final rule (82 FR 558 through 563). The clinician financial arrangements list (§ 510.120(b)) will be used by CMS to identify eligible clinicians for whom we would make a QP determination based on services furnished through the Advanced APM track of the CJR model.

2. Proposed Clinician Engagement List Requirements

To increase opportunities for eligible clinicians supporting CJR model participant hospitals by performing CJR model activities and who are affiliated with participant hospitals to be considered QPs, we proposed that each physician, nonphysician practitioner, or therapist who is not a CJR collaborator during the period of the CJR model performance year specified by CMS, but who does have a contractual relationship with the participant hospital based at least in part on supporting the participant hospital's quality or cost goals under the CJR model during the period of the performance year specified by CMS, would be added to a clinician engagement list.

In addition to the clinician financial arrangement list that is considered an Affiliated Practitioner List for purposes of the Quality Payment Program, we proposed the clinician engagement list would also be considered an Affiliated Practitioner List. The clinician engagement list and the clinician financial arrangement list would be considered together an Affiliated Practitioner List and would be used by CMS to identify eligible clinicians for whom we would make a QP determination based on services furnished through the Advanced APM track of the CJR model. As specified in § 414.1425, as of our regulations, adopted in the Calendar Year (CY) 2017 Quality Payment Program final rule (81 FR 77551), those physicians, nonphysician practitioners, or therapists who are included on the CJR model Affiliated Practitioner List as of March 31, June 30, or August 31 of a QP performance period would be assessed to determine their QP status for the year. As discussed in the 2017 Quality Payment Program final rule (81 FR 77439 and 77440), for clinicians on an

Affiliated Practitioner List, we determined whether clinicians meet the payment amount or patient count thresholds to be considered QPs (or Partial QPs) for a year by evaluating whether individual clinicians on an Affiliated Practitioner List have sufficient payments or patients flowing through the Advanced APM; we do not make any determination at the APM Entity level for Advanced APMs in which eligible clinicians are not identified on a Participation List, but are identified on an Affiliated Practitioner List. CMS makes the QP determination based on Part B claims data, so clinicians need not track or report payment amount or patient count information to CMS.

We noted that the proposal to establish a clinician engagement list would broaden the scope of eligible clinicians that are considered Affiliated Practitioners under the CJR model to include those without a financial arrangement under the CJR model but who are either directly employed by or contractually engaged with a participant hospital to perform clinical work for the participant hospital when that clinical work, at least in part, supports the cost and quality goals of the CJR model. We proposed that the cost and quality goals of the additional affiliated practitioners who are identified on a clinician engagement list because they are contracted with a participant hospital must include activities related to CJR model activities. CJR model activities are activities related to promoting accountability for the quality, cost, and overall care for beneficiaries during LEJR episodes included in the CJR model, including managing and coordinating care; encouraging investment in infrastructure, enabling technologies, and redesigned care processes for high quality and efficient service delivery; the provision of items and services during a CJR episode in a manner that reduces costs and improves quality; or carrying out any other obligation or duty under the CJR model.

Like the requirements of the clinician financial arrangement lists specified at § 510.120(b), for CMS to make QP determinations for eligible clinicians based on services furnished through the CJR Advanced APM track, we would require that accurate information about each physician, non-physician practitioner, or therapist who is not a CJR collaborator during the period of the CJR model performance year specified by CMS, but who is included on a clinician engagement list, be provided to CMS in a form and manner specified by CMS on a no more than quarterly basis. Thus, we proposed that each

participant hospital in the Advanced APM track of the CJR model submit to CMS a clinician engagement list in a form and manner specified by CMS on a no more than quarterly basis. We proposed this list must include the following information on eligible clinicians for the period of the CJR model performance year specified by CMS:

- For each physician, non-physician practitioner, or therapist who is not a CJR collaborator during the period of the CJR model performance year specified by CMS but who does have a contractual relationship with a participant hospital based at least in part on supporting the participant hospital's quality or cost goals under the CJR model during the period of the CJR model performance year specified by CMS:

- ++ The name, TIN, and NPI of the individual.

- ++ The start date and, if applicable, the end date for the contractual relationship between the individual and participant hospital.

Further, we proposed that if there are no individuals that meet the requirements to be reported, as specified in any of § 510.120 (b)(1) through (3) of the EPM final rule or § 510.120(c) of the August 17, 2017 proposed rule (82 FR 39310 through 39333), the participant hospital must attest in a form and manner required by CMS that there are no individuals to report.

Given that the proposal would require submission of a clinician engagement list, or an attestation that there are no eligible clinicians to be included on such a list, to reduce burden on participant hospitals, we would collect information for the clinician engagement list and clinician financial arrangement list at the same time.

We sought comments on the proposal for submission of this information. We noted that we were especially interested in comments about approaches to information submission, including the periodicity and method of submission to CMS that would minimize the reporting burden on participant hospitals while providing CMS with sufficient information about eligible clinicians to facilitate QP determinations.

For each participant hospital in the CJR Advanced APM track, we proposed that the participant hospital must maintain copies of its clinician engagement lists and supporting documentation (that is, copies of employment letters or contracts) of its clinical engagement lists submitted to CMS. Because we would use these lists to develop Affiliated Practitioner Lists used for purposes of making QP

determinations, these documents would be necessary to assess the completeness and accuracy of materials submitted by a participant hospital and to facilitate monitoring and audits. For the same reason, we further proposed that the participant hospital must retain and provide access to the required documentation in accordance with § 510.110.

Comment: Many commenters supported our proposal to broaden the scope of eligible clinicians that could be considered Affiliated Practitioners under the CJR model and therefore eligible for the incentives available under the Advanced APM track of the Quality Payment Program. Commenters urged CMS to finalize the policy as proposed, stressing the importance of providing further opportunities for clinician groups to engage in more comprehensive risk-based Advanced APMs as an alternative to MIPS reporting. Commenters also stated that a significant number of healthcare clinicians support participant hospitals but their efforts are not accounted for by CMS, despite the critical importance of the care they deliver to patients included within the CJR model. These commenters noted that expanding the number of Affiliated Practitioners will help to recognize the efforts of those clinicians while also enhancing access to care under the CJR model.

Response: We appreciate the positive feedback on the proposed policy, and agree with commenters that increasing opportunities for clinicians in a contractual relationship with Advanced APM participant hospitals is valuable. We agree that the work these clinicians perform on CJR model activities is essential to the success of care under the CJR model and that we should be recognizing the efforts of these clinicians by providing them the opportunity to qualify as qualified practitioners under the Quality Payment Program.

Comment: A commenter requested that CMS provide clarification on the definition of contractual agreements, and that CMS provide further guidance on how CJR-related activities will be monitored and whether there will be any thresholds that clinicians must meet to be considered engaged in the quality or costs goals of CJR.

Response: To clarify, for each physician, non-physician practitioner, or therapist who is not a CJR collaborator during the period of the CJR model performance year specified by CMS, but who does have a contractual relationship with the participant hospital based at least in part on supporting the participant hospital's

quality or cost goals under the CJR model during the period of the performance year as specified by CMS, can be included on the hospital's clinician engagement list. The term contractual relationship encompasses the wide range of relationships whereby a participant hospital engages a clinician to perform work that at least in part supports the cost and quality goals of the CJR model.

CMS will monitor compliance with the requirement that clinicians be engaged to support cost and quality goals via a range of methods, including but not limited to document reviews and site visits.

CMS is not establishing a specific threshold a clinician must meet to be considered engaged in supporting the cost and quality goals of the CJR model.

Comment: Several commenters objected to the requirement that hospitals include a clinician's start and end date on the clinician engagement list, noting a start date is not feasible because the clinician's employment may have started before the start of the CJR model and may not have end-dates but rather automatically renew. Commenters also stated that maintaining and submitting a clinician engagement list is burdensome. The commenters suggested that hospitals should attest that the clinician was under contract during the model, and that CMS could conduct audits to verify this information.

Response: We appreciate commenters' feedback on this requirement for submitting the clinician engagement list. The requirement that a hospital include the clinician's start date at a minimum will allow CMS to determine whether the clinician is an eligible clinician for Quality Payment Program purposes; a simple attestation will not suffice for the Quality Payment Program. We understand that clinicians may have begun the contractual relationship with the hospital prior to the start of the CJR model. However, the hospital will have to determine whether and when the contractual relationship with the clinician began supporting the participant hospital's quality or cost goals under the CJR model. The hospital would then report to CMS the date on which the relationship began supporting the cost and quality goals of the CJR model. For example, if a physician started working at the participant hospital on 1/1/2000 and started supporting the participant hospital's quality or cost goals under the CJR model on 7/15/2016, the hospital would report 7/15/2016. The end date of the contractual relationship need only be supplied if the clinician has one. Also,

we understand that maintaining a list can be burdensome; however, we developed this requirement in response to feedback from stakeholders and hospitals who expressed a desire to enhance opportunities for those physicians, non-physician practitioners, and therapists without a financial arrangement under the CJR model. Finally, in order to reduce burden, CMS will collect information for the clinician financial arrangement list and the clinician engagement list together. Hospitals will be able to complete all required attestations at one time.

Summary of Final Decisions: We thank the commenters for their suggestions and feedback. We are finalizing our policy as proposed. This policy is codified at § 510.120(c) through (e).

G. Clarification of Use of Amended Composite Quality Score Methodology During CJR Model Performance Year 1 Subsequent Reconciliation

We conducted the initial reconciliation for performance year 1 of the CJR model in early 2017 and made reconciliation payments to CJR participant hospitals in fall 2017 to accommodate the performance year 1 appeals process timelines. We will conduct the subsequent reconciliation calculation for performance year 1 of the CJR model beginning in the first quarter of 2018, which may result in additional amounts to be paid to participant hospitals or a reduction to the amount that was paid for performance year 1. However, the results of the performance year 1 subsequent reconciliation calculations will be combined with the performance year 2 initial reconciliation results before reconciliation payment or repayment amounts are processed for payment or collection. Changes to the CJR model established in the EPM final rule impact this process.

The improvements to the CJR model quality measures and composite quality score methodology, which were finalized in the EPM final rule (82 FR 524 through 526), were intended to be effective before the CJR model's performance year 1 initial reconciliation. However, as noted in section II. of the proposed rule (82 FR 39311), the effective date for certain EPM final rule provisions, including those amending §§ 510.305 and 510.315 to improve the quality measures and composite quality score methodology, were delayed until May 20, 2017.

As a result, the CJR reconciliation reports issued in April 2017 were created in accordance with the provisions of §§ 510.305 and 510.315 in effect as of April 2017; that is, the

provisions finalized in the CJR model final rule. In early 2018, we would perform the performance year 1 subsequent reconciliation calculation in accordance with the provisions §§ 510.305 and 510.315 in effect as of early 2018, that is, established in the EPM final rule. Applying the provisions established in the EPM final rule to the performance year 1 subsequent reconciliation calculation may result in significant differences between the reconciliation payments calculated during the performance year 1 initial reconciliation and the performance year 1 subsequent reconciliation. We anticipate that these differences will be greater than those that would be expected as a result of using more complete claims and programmatic data that will be available for the subsequent reconciliation (due to the additional 12 months of time that will occur between the initial and subsequent reconciliation calculations), more accurate identification of model overlap and exclusion of episodes, as well as factoring in adjustments to account for shared savings payments, and post-episode spending, as specified in § 510.305(i).

Specifically, the methodology used to determine the quality-adjusted target price for the performance year 1 subsequent reconciliation calculation would differ from the methodology used to determine the quality-adjusted target price for the performance year 1 initial reconciliation calculation as follows: The quality-adjusted target price would be recalculated to apply the amended reductions to the effective discount factors (§ 510.315(f)), which would be determined after recalculating the composite quality scores, including applying more generous criteria for earning quality improvement points (that is, a 2 decile improvement rather than 3 decile improvement as specified in amended § 510.315(d)). Using the recalculated quality-adjusted target price, the net payment reconciliation amount (NPRA) would be recalculated and include application of post-episode spending reductions (§ 510.305(j)), as necessary, after determining the limitations on loss or gain. Thus, calculating performance year 1 reconciliation payments using these two different provisions may result in a range of upward or downward adjustments to participant hospitals' performance year 1 payment amounts. We note that a downward adjustment to the performance year 1 payment amounts would require payment recoupment, if offset against a performance year 2 initial reconciliation

payment amount is not feasible, which may be burdensome for participant hospitals.

In developing the August 17, 2017 proposed rule (82 FR 39310 through 39333), we also considered whether there might be benefit in further delaying the amendments to §§ 510.305 and 510.315 such that the same calculations would be used for both the performance year 1 initial reconciliation and the subsequent performance year 1 reconciliation, and the use of the amended calculations would begin with the performance year 2 initial reconciliation. We noted that we believe such an approach would impact future CJR model implementation and evaluation activities. Because determining the performance year 2 composite quality score considers the hospital's quality score improvement from its performance year 1 score, using different methodologies across performance years would require a mechanism to account for differences in the quality score methodology, for example we would have to develop a reliable crosswalk approach. If we were to develop and use a crosswalk approach, participants and other stakeholders would need to be informed about the crosswalk methodology in order to validate data analyses across performance years and that usage of the crosswalk would be ongoing throughout the model's duration for consistency across performance years. This methodology could add substantial complexity to this time-limited model. We also considered that the composite quality score for some participant hospitals may be higher under the revised scoring methodology. Delaying use of the revised scoring methodology may disadvantage participants if their composite quality score would be higher and result in a more favorable discount percentage or allow the hospital to qualify for a reconciliation payment. Therefore, we believed the best approach was to apply the quality specifications as established in the EPM final rule (that is, the amendments to §§ 510.305 and 510.315 that became effective May 20, 2017) to performance year 1 subsequent reconciliation calculations to ensure that reconciliation calculations for subsequent performance years will be calculated using the same methodology and to improve consistency across performance years for quality improvement measurement. Thus, for the reasons noted previously, we did not propose to change the amendments to §§ 510.305 and 510.315 that became effective May 20, 2017. We sought

comment on whether using an alternative approach, such as the composite quality score methodology from the CJR model final rule for the performance year 1 subsequent reconciliation, would ensure better consistency for analyses across CJR performance years.

Comment: We received several comments supporting our proposal to apply the quality specifications as established in the EPM final rule (that is, the amendments to §§ 510.305 and 510.315 that became effective May 20, 2017) to performance year 1 subsequent reconciliation calculations. Several commenters favored this approach because they believed it was unlikely for a hospital's quality category to decrease between the initial and subsequent reconciliation. A commenter favored applying the EPM final quality specifications to performance year 1 subsequent reconciliation calculations because they believed applying more generous criteria for earning quality improvement points and using a more appropriate national peer group as the reference for determining performance would result in higher composite quality scores. The commenter stated that these higher composite quality scores would allow more CJR participant hospitals to be eligible for reconciliation payments or to owe smaller repayments and would preserve the ability for high-performing hospitals to earn reconciliation payments that more accurately reflect their performance and investments in the model. The commenter noted that transitioning to the revised composite quality score methodology between the performance year 1 initial and subsequent reconciliation calculations may increase the differences between the results of the two calculations than would otherwise have occurred during subsequent reconciliation due to the anticipated longer claims run out, accounting for model overlap, and post-episode spending adjustments. They stated that the difference would vary by hospital, and could be positive or negative. The commenter clarified that the impact of any larger downward adjustments, however, should occur in performance year 1, when hospitals are not responsible for repayments to CMS if their costs exceed their quality-adjusted target price. Finally, the commenter stated that delaying implementation of the EPM final quality specifications until performance year 2 initial reconciliation calculations would increase CJR operational complexity and complicate evaluation of CJR model results. The commenter urged CMS to

share results from the performance year 1 subsequent reconciliation with participant hospitals as early as feasible in 2018 to minimize uncertainty for hospitals, should a downward adjustment occur.

Response: We appreciate the feedback we received from commenters on the benefits of applying the quality specifications as established in the EPM final rule to performance year 1 subsequent reconciliation calculations, and we thank the commenters for their support of our proposed policy. We agree there are benefits to applying the EPM final rule quality specifications to performance year 1 subsequent reconciliation calculations instead of delaying use of the amended specifications until initial reconciliation for performance year 2. These benefits include reducing the complexity of future evaluation of the model and preventing possibly disadvantaging participants whose composite quality scores would be higher as a result of applying the amended specifications.

Comment: Several commenters opposed our proposal to apply the quality specifications established in the EPM final rule to performance year 1 subsequent reconciliation calculations. A commenter stated that a hospital's payment should not be adjusted for performance year 1 as a result of administrative issues, such as the delay of the effective date for the EPM final rule, which occurred between the initial reconciliation and the subsequent reconciliation for performance year 1.

Response: We appreciate the commenters' concerns regarding possible downward adjustments to the performance year 1 payment amounts that would require repayment recoupment. We intended for the refinements to the CJR model quality measures and composite quality score methodology finalized in the EPM final rule (82 FR 524 through 526) to be effective before the CJR model's performance year 1 initial reconciliation. We acknowledge that the delayed effective date for the EPM final rule has caused frustration, and we acknowledge that a downward adjustment requiring payment recoupment would be burdensome for participant hospitals.

For these reasons, we sought comment on whether using an alternative approach, such as applying the quality composite score methodology from the CJR model final rule to the performance year 1 subsequent reconciliation, would ensure better consistency for analyses across performance years. Commenters generally supported our proposal to

apply the quality specifications as established in the EPM final rule. Furthermore, we believe that the benefits to hospitals of applying the quality specifications finalized in the EPM final rule to performance year 1 subsequent reconciliation justify finalizing our proposal. This approach ensures that reconciliation calculations for subsequent performance years will be calculated using the same methodology, eliminating the need for the development of a crosswalk approach for reconciling differences in composite quality scores across performance years and reducing the impact on future model evaluation efforts.

Comment: Several commenters provided out-of-scope public comments that suggested changes to the composite quality score methodology, the choice of quality measures in the EPM and CJR models, and the patient reported outcomes (PRO) data submission. Several commenters believed the revised composite quality score methodology was not in the best interest of model success, and CMS was inaccurate in stating that the changes to the composite quality score would result in a higher composite quality score for some participant hospitals. Several commenters suggested we include, replace, or drop some or all of the finalized quality measures. Finally, a commenter stated that CMS did not provide sufficient supporting rationale for determinations regarding patient-reported outcomes (PRO) data submission, nor did CMS provide clear information on which patients were eligible for PRO data collection. This commenter requested that CMS provide hospitals with lists of PRO-eligible patients on a regular basis.

Response: We consider these public comments to be outside of the scope of the August 17, 2017 proposed rule. Therefore, we are not addressing them in this final rule and interim final rule with comment period. We may consider these public comments in future rulemaking. We do note that a number of resource guides on the PRO data collection process and eligible patients is available to CJR participant hospitals on the CJR Connect site.

Summary of Final Decisions: We are finalizing our proposal to apply the quality specifications as established in the EPM final rule (that is, the amendments to §§ 510.305 and § 510.315 that became effective May 20, 2017) to performance year 1 subsequent reconciliation calculations.

H. Clarifying and Technical Changes Regarding the Use of the CMS Price (Payment) Standardization Detailed Methodology

Based on questions we received from participant hospitals during the performance year 1 reconciliation process, we proposed to make two technical changes to the CJR model regulations to clarify the use of the CMS Price (Payment) Standardization Detailed Methodology, posted on the QualityNet Web site at <http://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228772057350>, in the calculation of target prices and actual episode spending. This pricing standardization approach was the same as that used for the Hospital Value-Based Purchasing Program's (HVPB) Medicare spending per beneficiary metric. In section III.C.3.a. of the CJR model final rule (80 FR 73331 through 73333), we finalized how we would operationalize the exclusion of the various special payment provisions in calculating CJR model episode expenditures, both historical episode spending and performance year episode spending, by relying upon the CMS Price (Payment) Standardization Detailed Methodology with modifications. However, we did not clearly articulate the finalized policy in the regulations at 42 CFR part 510. Thus, we proposed the following technical changes to bring the regulatory text into conformity with our intended policy and to reduce potential stakeholder uncertainty about how the price (payment) standardization methodology is used. We proposed to insert "standardized" into the definition of actual episode payment in § 510.2, and insert "with certain modifications" into § 510.300(b)(6) to account for the modifications we must make to the standardization methodology to ensure all pricing calculations are consistent with our finalized policies.

Comment: We received no comments on our proposal.

Response: We are finalizing our proposal to insert "standardized" into the definition of actual episode payment in § 510.2, and insert "with certain modifications" into § 510.300(b)(6).

I. Public Comments on Removal of Total Knee Arthroplasty (TKA) From the Inpatient-Only (IPO) List and on the Need for a Disaster Policy for Affected CJR Episodes

1. Pricing Implications of the Removal of TKA From the IPO List

In the CY 2017 Outpatient Prospective Payment System (OPPS) Proposed Rule

(81 FR 45679 through 45681) we sought comment on the potential removal of TKA from the IPO list from interested parties, although we did not make any proposals regarding the issue. We specifically requested input on potential changes to the BPCI initiative and CJR model if we should make such a policy change in the future. In the CY 2018 Outpatient Prospective Payment System (OPPS) Proposed Rule (82 FR 33558), we proposed to remove total knee arthroplasty from the IPO list. We refer readers to that proposed rule for more details regarding the proposal.

Comment: Numerous commenters requested that, should we finalize the proposal to remove TKA from the IPO list, we also finalize a policy to modify the CJR pricing methodology. Commenters stated that if TKA is removed from the IPO list, the CJR target prices will no longer accurately reflect spending for the inpatient population, given that the historical time period used to set prices included all Medicare TKA cases under MS-DRGs 469 and 470, including those that could be performed on an outpatient basis (and are presumably less costly) if TKA is removed from the IPO list. Commenters were concerned that if Medicare begins to pay for TKA in outpatient settings and does not make adjustments to CJR prices, the case mix under the model (that is, beneficiaries in CJR episodes) will include only more costly and higher-acuity cases that are not appropriate for outpatient settings. Thus, LEJR procedures furnished in inpatient settings (and included in CJR episodes) will be more costly than those in outpatient settings, negatively affecting CJR hospitals' potential to financially succeed under the model. Commenters noted that without a pricing adjustment, CJR participant hospitals could have a hard time meeting spending targets if many lower-cost cases move to the outpatient setting. Commenters suggested a variety of solutions, including: Setting a separate target price for outpatient TKA cases and including them in CJR; various methodologies to estimate the removal of outpatient cases from the baseline period when setting target prices; and robust risk adjustment. A commenter suggested we test the removal of TKA from the IPO list as part of our bundled payment models before implementing a change on a national basis. Other commenters stated that hospitals eligible for a voluntary participation election in January 2018 cannot make a participation decision without knowing how CMS will modify the CJR pricing methodology to ensure

participant hospitals are not negatively affected by the removal of TKA from the IPO list.

Response: We thank the commenters for their feedback and thoughtful suggestions on ways we could refine the CJR pricing methodology to ensure our decision to remove TKA from the IPO list would not harm hospitals. We refer readers to the 2018 OPPS Final Rule (82 FR 52356) which discusses our finalized policy to remove TKA from the IPO list. Because we did not make a proposal regarding changes to the CJR payment methodology and because there is no clinical experience or claims data yet available for analysis on the potential impacts of this policy change on the CJR target pricing methodology, we will consider all comments and address this issue through future rulemaking, as appropriate.

2. Need for a Policy To Address the Recent Hurricanes and Other Natural Disasters

In late August and September 2017 several hurricanes created significant damage to multiple states and in late September 2017, severe wildfires wreaked havoc on many counties in California.

Comment: Several commenters requested that CMS recognize the unique challenges faced by CJR participant hospitals during the recent natural disasters that have occurred in or near several of the CJR MSAs. Commenters noted that beneficiaries in disaster areas may have required unplanned or extensive healthcare services as a result of evacuation or other emergency situations. Commenters were also concerned that hospitals in the disaster areas would not be able to complete their quality reporting requirements. Commenters stated that CJR participant hospitals should not be held financially accountable for such spending that is beyond their control. Commenters suggested that CMS offer a waiver of the participation requirement or another mechanism to ensure that hospitals are not held accountable for circumstances beyond their control due to natural disasters.

Response: We thank the commenters for their suggestions. We understand that some participant hospitals in the CJR model have been impacted by recent natural disasters and that there is a clear need for a policy in CJR to address expenditures outside the control of hospitals located in areas experiencing extreme and uncontrollable circumstances.

III. Provisions of the Interim Final Rule With Comment Regarding Significant Hardship Due to Extreme and Uncontrollable Circumstances in the CJR Model

A. Overview and Background

This interim final rule with comment period is being issued in conjunction with this final rule to address the need for a policy that would apply for performance year 2 (and, when finalized, that would also apply for the future performance years 3 through 5 of the CJR model) providing some flexibility in determining episode spending for CJR participant hospitals located in areas impacted by extreme and uncontrollable circumstances. This interim final rule with comment period most notably addresses Hurricane Harvey, Hurricane Irma, Hurricane Nate, and the California wildfires of August, September, and October 2017 but could also include other similar events that occur within a given performance year, including performance year 2, if those events meet the requirements we are setting forth in this policy in this interim final rule with comment. While Hurricane Maria, which also occurred in the same time frame, had and, as of the writing of this rule, continues to have a significant and crippling effect on Puerto Rico and the U.S. Virgin Islands, Hurricane Maria is not part of this particular interim final rule with comment as the CJR model is not in operation in the areas impacted by Hurricane Maria, and, therefore there are no CJR participant hospitals that have been impacted by Hurricane Maria. Hurricane Harvey, Hurricane Irma, Hurricane Nate, and the California wildfires affected large regions of the United States where the CJR model operates, leading to widespread destruction of infrastructure that impacted residents' ability to continue normal functions afterwards.

At least 101 CJR participant hospitals are located in the areas affected by Hurricane Irma and Hurricane Harvey, at least 22 CJR participant hospitals are located in areas impacted by the California wildfires and approximately 12 are in the areas affected by Hurricane Nate. Based on a review of news articles focusing on the hurricanes, at least 35 hospitals evacuated for Hurricane Irma¹ and several hospitals evacuated at least partially for Hurricane Harvey.² In

¹ Irma forces at least 35 hospitals to evacuate patients. Here's a rundown. September 9, 2017. <https://www.statnews.com/2017/09/09/irma-hospital-evacuations-rundown/>. Accessed November 21, 2017.

² After Harvey Hit, a Texas Hospital Decided to Evacuate. Here's How Patients Got Out. September

Florida, at least two CJR participant hospitals in Miami, (Anne Bates Leach Eye Hospital and University of Miami Hospital) and one CJR participant hospital in Miami Beach—Mount Sinai Medical Center—had to close because of Hurricane Irma.³ Tampa General Hospital, a CJR participant hospital in Tampa, evacuated all patients except for those too ill to move.⁴ In response to Hurricane Irma, on September 9, 2017, Tampa Community Hospital, CJR participant hospital, suspended all services and evacuated all patients to two other CJR participant hospitals, Brandon Regional Hospital and Medical Center of Trinity.⁵ In Texas, Baptist Beaumont Hospital, a CJR participant hospital in Beaumont, Texas, had to shut down and evacuate on August 31, 2017.⁶ On the same day, Christus Southeast Texas St. Elizabeth, another CJR participant hospital in Beaumont, Texas, left only the emergency and trauma center of the hospital open in order to ensure they had enough water for the patients still at the hospital.⁶ Patients seeking care at the Medical Center of Southeast Texas, a CJR participant hospital in Port Arthur, Texas, had to be taken by dump truck through the submerged hospital parking lot to the perimeter of the property, where a boat would take them to the hospital.⁶ An additional review of news related to California wildfires also shows that the fires caused various hospitals to evacuate patients.⁷ On November 16, 2017, five counties in Alabama were declared as major disaster areas due to the destruction of structures, piers, roads and bridges caused by Hurricane Nate.³ Although we do not yet have enough data to evaluate these events' specific effects on CJR episodes, we anticipate that at least some CJR participant hospitals may have experienced episode cost escalation as a result of hurricane or fire

damage and subsequent emergency evacuations.

Under § 510.305(e), as of performance year 2, CJR participant hospitals who have episode costs as calculated under § 510.305(e)(1)(iii) (for example, episode costs that exceed the target price for the performance year) will owe CMS 5 percent of the loss. While the intent of this policy is to incentivize providers to control costs while managing and improving the quality of CJR patient care, we note that in extreme and uncontrollable circumstances, prudent patient care management may involve potentially expensive air ambulance transport or prolonged inpatient stays when other alternatives are not practical due, for example, to state and local mandatory evacuation orders or compromised infrastructure. In addition to the news reports of disaster conditions that impacted several CJR participant hospitals, a number of research studies on natural disasters and rushed evacuations for hospitals support our assumption that costs can rise during disaster situations.⁴

Currently, CJR regulations at § 510.210 do not allow cancellation of episodes for extreme and uncontrollable circumstances. The CJR regulations at § 510.305 also do not permit an adjustment to account for episode spending that may have escalated significantly due to events driven by extreme and uncontrollable circumstances.

B. Identifying Participant Hospitals Affected by Extreme and Uncontrollable Circumstances

For purposes of developing a policy to identify hospitals affected by extreme and uncontrollable circumstances, we consulted section 1135 of the Social Security Act, where the Secretary may temporarily waive or modify certain Medicare requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods and that providers who provide such services in good faith can be reimbursed and exempted from sanctions (absent any determination of fraud or abuse). The Secretary has invoked this authority in response to significant natural disasters such as

Hurricane Katrina in 2005 and Superstorm Sandy in 2012. Though the 1135 waiver authority enables us to take actions that give healthcare providers and suppliers greater flexibility, it does not allow for payment adjustment for participant hospitals in the CJR model. However, the extreme and uncontrollable circumstance policy should only apply when a disaster is widespread and extreme. A section 1135 waiver identifies the “emergency area” and “emergency period,” as defined in section 1135(g) of the Social Security Act, for which waivers are available. We believe it is appropriate to establish an extreme and uncontrollable circumstance policy that applies only when and where the magnitude of the event calls for the use of special waiver authority to help providers respond to the emergency and continue providing care.

The extreme and uncontrollable circumstance policy also should be tailored to the specific areas experiencing the extreme and uncontrollable circumstance. Section 1135 waivers typically are authorized for a geographic area that may encompass a greater region than is directly and immediately affected by the relevant emergency. For purposes of this policy, a narrower geographic scope than the full emergency area (as that term is defined in section 1135(g) of the Act)⁵ would ensure that the payment policy adjustment is focused on the specific areas that experienced the greatest adverse effects from the extreme and uncontrollable circumstance and is not applied to areas sustaining little or no adverse effects.

To narrow the scope of this policy to ensure it is applied to those providers most likely to have experienced the greatest adverse effects, we would therefore also require that the area be declared as a major disaster area under the Stafford Act, which serves as a condition precedent for the Secretary's exercise of the 1135 waiver authority. Once an area is declared as a major disaster area under the Stafford Act, the specific counties, municipalities, parishes, territories, and tribunals that are part of the major disaster area are identified and can be located on Federal Emergency Management Agency

6, 2017. <https://www.nytimes.com/2017/09/06/us/texas-hospital-evacuation.html>. Accessed November 21, 2017.

³ Hurricane Irma causes 36 Florida hospitals to close. September 12, 2017. <https://www.healthdatamanagement.com/news/hurricane-irma-causes-36-florida-hospitals-to-close>. Accessed November 22, 2017.

⁴ At Tampa Hospital in Evacuation Zone, 800 Patients and Staff Ride Out Hurricane Irma. September 10, 2017. <https://weather.com/storms/hurricane/news/hurricane-irma-tampa-hospital-evacuation-zone>. Accessed November 22, 2017.

⁵ Tampa Community Hospital has suspended all services and has evacuated patients. September 9, 2017. <https://tampacomunityhospital.com/about/newsroom/tampa-community-hospital-has-suspended-all-services-and-has-evacuated-patients>. Accessed November 22, 2017.

⁶ http://www.al.com/news/mobile/index.ssf/2017/11/trump_declares_major_disaster.html.

⁴ Tia Powell, Dan Hanfling, Lawrence O. Gostin. Emergency Preparedness and Public Health: The Lessons of Hurricane Sandy. *JAMA*. 2012;308(24):2569–2570. doi:10.1001/jama.2012.108940; Christine S. Cocanour, Steven J. Allen, Janine Mazabob, John W. Sparks, Craig P. Fischer, Juanita Romans, Kevin P. Lally. Lessons Learned From the Evacuation of an Urban Teaching Hospital. *Arch Surg*. 2002;137(10):1141–1145. doi:10.1001/archsurg.137.10.1141.

⁵ (g) DEFINITIONS.—For purposes of this section: (1) EMERGENCY AREA; EMERGENCY PERIOD.—An “emergency area” is a geographical area in which, and an “emergency period” is the period during which, there exists—(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act[102] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act[103]; and (B) a public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act.

(FEMA) Web site at www.FEMA.gov/disasters. For this policy, only major disaster declarations under the Stafford Act will be used to identify the specific counties, municipalities, parishes, territories, and tribunals where the extreme and uncontrollable circumstance took place. Using the major disaster declaration as a requirement for the extreme and uncontrollable event policy also ensures that the policy would apply only when the event is extreme, meriting the use of special authority, and targeting the specific area affected by the extreme and uncontrollable circumstance. To note, we are not including emergency declarations under the Stafford Act or national emergency declarations under the National Emergencies Act in this policy, even if such a declaration serves as a basis for the Secretary's invoking the 1135 waiver authority. This is because we believe it is appropriate for our extreme and uncontrollable circumstance policy to apply only in the narrow circumstance where the circumstance constitutes a major disaster, which are more catastrophic in nature and tend to have significant impacts to infrastructure, rather than the broader grounds for which an emergency could be declared.

In establishing a policy to define extreme and uncontrollable circumstances for the CJR model, we identify an area as having experienced 'extreme and uncontrollable circumstances,' if it is within an "emergency area" and "emergency period" as defined in section 1135(g) of the Act, and also is within a county, parish, U.S. territory or tribal government designated in a major disaster declaration under the Stafford Act that served as a condition precedent for the Secretary's exercise of the 1135 waiver authority.

We believe Hurricanes Harvey, Irma, and Nate and the recent California wildfires trigger the automatic extreme and uncontrollable circumstance policy we are adopting in this interim final rule with comment period. For the performance year 2 reconciliation that will be conducted beginning in March of 2018, this extreme and uncontrollable circumstance policy will apply to those CJR participant hospitals whose CCN has a primary address located in a state, U.S. territory, or tribal government that is within an "emergency area" and "emergency period," as those terms are defined in section 1135(g) of the Act, for which the Secretary has issued a waiver under section 1135 of the Act and that is designated in a major disaster declaration under the Stafford Act that served as a condition precedent for the

Secretary's exercise of the 1135 waiver authority. The states and territories for which section 1135 waivers were issued in response to Hurricanes Harvey, Irma, Nate and the California wildfires are Alabama, California, Florida, Georgia, South Carolina, Texas, Louisiana, Mississippi. Section 1135 waivers also were issued for Puerto Rico and the Virgin Islands as a result of Hurricane Maria, but there are no CJR participant hospitals with CCNs with a primary address in either of these areas. To view the 1135 waiver documents and for additional information on section 1135 waivers see: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/>. The major disaster declarations are located on FEMA Web site at <https://www.fema.gov/disasters>. When locating the counties, municipalities, parishes, tribunals, and territories for the major disaster declaration, FEMA designates these locations as 'designated areas' for that specific state, or tribunal. All counties, municipalities, parishes, tribunals, and territories identified as designated areas on the disaster declaration are included.

The counties, parishes, and tribal governments that have met the criteria for the CJR policy on extreme and uncontrollable events in performance year 2 are:⁶

- The following counties in Alabama: Autauga, Baldwin, Choctaw, Clarke, Dallas, Macon, Mobile, and Washington.⁷

The following counties in California: Butte; Lake; Mendocino; Napa; Nevada Orange; Sonoma; and Yuba.⁸

- All 67 counties⁹ and Big Cypress Indian Reservation, Brighton Indian Reservation, Fort Pierce Indian Reservation, Hollywood Indian Reservation, Immokalee Indian Reservation, Tampa Reservation in Florida.¹⁰

- All 159 counties in Georgia.¹¹
- All 46 counties, and the Catawba Indian Reservation in South Carolina.¹²
- The following counties in Texas: Aransas; Austin; Bastrop; Bee; Bexar;

Brazoria; Calhoun; Chambers; Colorado; Dallas; Dewitt; Fayette; Fort Bend; Galveston; Goliad; Gonzales; Hardin; Harris; Jackson; Jasper; Jefferson; Karnes; Kleberg; Lavaca; Lee; Liberty; Matagorda; Montgomery; Newton; Nueces; Orange; Polk; Refugio; Sabine; San Jacinto; San Patricio; Tarrant; Travis; Tyler; Victoria; Walker; Waller; and Wharton.¹³

- The following parishes in Louisiana: Acadia; Allen; Assumption; Beauregard; Calcasieu; Cameron; De Soto; Iberia; Jefferson Davis; Lafayette; Lafourche; Natchitoches; Plaquemines; Rapides; Red River; Sabine; St. Charles; St. Mary; Vermilion; and Vernon.¹⁴

Using these criteria, CMS was able to identify at least 101 CJR participant hospitals located in the areas affected by Hurricanes Harvey and Hurricane Irma, approximately 12 CJR participant hospitals in the areas affected by Hurricane Nate, and at least 22 CJR participant hospitals in areas impacted by the California wildfires. As there are no CJR model areas in Puerto Rico or the U.S. Virgin Islands, we note that no CJR participant hospitals were impacted by Hurricane Maria. CMS will notify providers for whom this extreme and uncontrollable circumstances policy will apply for performance year 2 (and subsequent performance years if and when the policy is invoked) via the initial reconciliation reports CMS delivers to providers upon completion of the reconciliation calculations, which under § 510.305(d) are initiated beginning 2 months after the close of the performance year.

Though the Hurricanes and California wildfires were the driving force for developing the extreme and uncontrollable circumstance policy, this policy is being implemented for the duration of the CJR model, and we are amending the CJR regulations accordingly, as further outlined later.

B. Provisions for Adjusting Episode Spending Due to Extreme and Uncontrollable Circumstances

Without a policy to provide CJR participant hospitals some flexibility in extreme and uncontrollable circumstances, we might inadvertently create an incentive to place cost considerations above patient safety, especially in the later years of the CJR model when the downside risk percentage increases. In considering policy alternatives to help ensure beneficiary protections by mitigating

⁶ The Secretary issued Mississippi a waiver under Section 1135 for Hurricane Nate, however the President did not issue a major disaster declaration (An emergency disaster declaration was issued.), so under this policy Mississippi is not included on this list.

⁷ <https://www.fema.gov/disaster/4349/designated-areas>.

⁸ <https://www.fema.gov/disaster/4344/designated-areas>.

⁹ <https://www.fema.gov/disaster/4337/designated-areas>.

¹⁰ <https://www.fema.gov/disaster/4341/designated-areas>.

¹¹ <https://www.fema.gov/disaster/4338/designated-areas>.

¹² <https://www.fema.gov/disaster/4346/designated-areas>.

¹³ <https://www.fema.gov/disaster/4332/designated-areas>.

¹⁴ <https://www.fema.gov/disaster/4345/designated-areas>.

participant hospitals' financial liability for costs resulting from extreme and uncontrollable circumstances, we considered and rejected a blanket cancellation of all episodes occurring during the relevant period. We do not believe that a blanket cancellation would be in either beneficiaries' or CJR participant hospitals' best interests, as it is possible that hospitals can manage costs and earn a reconciliation payment despite these extreme and uncontrollable circumstances.

Furthermore, we would not want CJR participant hospitals to limit case management services for beneficiaries in CJR episodes during extreme and uncontrollable circumstances, when prudent care management could potentially involve using significantly more expensive transport or care settings. Therefore, we determined that capping the actual episode spending at the target amounts for those episodes would be the best way to protect beneficiaries from potential care stinting and hospitals from escalating costs. This will also ensure that those hospitals are still able to earn reconciliation payments on those eligible episodes where the disaster did not have a noticeable impact on cost.

In determining the start date of episodes to which this extreme and uncontrollable circumstances policy would apply, we determined that a window of 30 days prior to and including the date that the emergency period (as defined in section 1135(g)) begins should reasonably capture those beneficiaries whose high CJR episode costs could be attributed to extreme and uncontrollable circumstances. We believe this 30-day window is particularly appropriate due to the 90-day CJR model episode length. Including all episodes that begin within 30 days before the date the emergency period begins should enable us to include the majority of beneficiaries still in institutional settings and who are still within the first third of their episodes when the extreme and uncontrollable circumstance arises. We note that the average length of stay for DRG 469 is between 5 and 6 days and the average length of stay for DRG 470 is between 2 and 3 days (see <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FY2018-CMS-1677-FR-Table-5.zip>).

Under § 510.300(a)(1), we differentiated fracture and non-fracture CJR episodes and pricing, noting that lower extremity joint replacement procedures performed as a result of a hip fracture are typically emergent procedures. Fracture episodes typically

occur for beneficiaries with more complex health issues and can involve higher episode spending. We do not expect a high volume of CJR non-fracture episodes to be initiated once extreme and uncontrollable circumstances arise, given that it is not prudent to conduct non-fracture major joint replacement surgeries, which generally are elective and non-emergent, until conditions stabilize and infrastructure is reasonably restored. Therefore, for non-fracture episodes, this extreme and uncontrollable circumstances policy will apply only to dates of admission to anchor hospitalization that occur between 30 days before and up to the date on which the emergency period (as defined in section 1135(g)) begins. We believe this policy empowers hospitals to decide whether they can safely and appropriately perform non-fracture THA and TKA procedures after the commencement of the emergency period and whether or not performing these procedures will subject their organization to undue financial risk resulting from increased costs that are beyond the organization's control.

However, for CJR fracture episodes, the extreme and uncontrollable circumstances policy will apply to dates of admission to the anchor hospitalization that occur within 30 days before, on, or up to 30 days after the date the emergency period (as defined in section 1135(g)) begins. We recognize that fracture cases in CJR are often emergent and unplanned, and it may not be prudent to postpone major joint surgical procedures in many of those CJR fracture cases. Therefore, fracture episodes with a date of admission to the anchor hospitalization that is on or within 30 days before or after the date that the emergency period (as defined in section 1135(g) of the Act) begins are subject to this extreme and uncontrollable circumstances policy. We believe that this 60-day window should ensure that hospitals caring for CJR fracture patients during extreme and uncontrollable circumstances are adequately protected from episode costs beyond their control.

For performance years 2 through 5, for participant hospitals that are located in an emergency area during an emergency period, as those terms are defined in section 1135(g) of the Act, for which the Secretary has issued a waiver under section 1135, and in a county, parish, U.S. territory or tribal government designated in a major disaster declaration under the Stafford Act, the following conditions apply. For a non-fracture episode with a date of admission to the anchor hospitalization

that is on or within 30 days before the date that the emergency period (as defined in section 1135(g)) begins, actual episode payments are capped at the target price determined for that episode under § 510.300. For a fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before or after the date that the emergency period (as defined in section 1135(g)) begins, actual episode payments are capped at the target price determined for that episode under § 510.300.

We are codifying this new extreme and uncontrollable circumstance policy at § 510.305(k). We seek comment on potential modifications refinements we might make to this policy for future performance year reconciliations after performance year 2.

D. Waiver of Proposed Rulemaking for Provisions Related to Extreme and Uncontrollable Circumstances

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide notice of the proposed rule in the **Federal Register** with no less than 60 days for public comment. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice-and-comment process is impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause to waive the notice-and-comment requirements under sections 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act due to the impact of Hurricanes Harvey, Irma, and Nate and the California wildfires as described in section A. of this interim final rule with comment period. Based on the size and scale of the destruction and displacement caused by these natural disasters in the regions identified, and the news reports regarding specific impacts to hospitals that are participating in the CJR model discussed in section A of this interim final rule with comment, we believe it is likely that some CJR episodes at participant hospitals have been significantly and adversely affected by these events. As discussed in detail in section A of this interim final rule with comment, due to extreme flooding or infrastructure destruction where many major and minor roads became impassable and homes and/or institutions were flooded and rendered

inhabitable, it is possible that some beneficiaries may have required air ambulance transport or extended institutional stays in inpatient or post-acute care settings; these necessary services may drive actual episode costs well beyond the target prices.

Furthermore, we received several requests for CMS to provide concessions for the unique challenges faced by CJR hospitals during the recent natural disasters. Commenters on the proposed rule noted that beneficiaries in disaster areas may have required unplanned or extensive healthcare services as a result of evacuation or other emergency situations and stated that CJR participant hospitals should not be held financially accountable for such spending that is beyond their control. They suggested that CMS offer a waiver of the participation requirement or another mechanism to ensure that hospitals are not held accountable for circumstances beyond their control due to natural disasters.

Because the recent disasters impacted CJR participant hospitals during performance year 2 and will therefore flow into the payment reconciliation calculations in March 2018, potentially having a negative impact on providers unless an extreme and uncontrollable events policy is established immediately, we believe it is in the public interest to adopt these final policies. These policies will provide relief to impacted CJR participant hospitals and ensure they do not incur financial liability for costs outside their control. Without the immediate establishment of a policy providing additional flexibilities to CJR participant hospitals in extreme and uncontrollable circumstances, we could inadvertently incentivize patient care stinting as CJR participant hospitals contend with evacuation costs or potential longer inpatient stays during disasters. In particular, CJR hospitals may experience unintentional negative incentives as compared to other, non-CJR hospitals because their actual spending is compared to target prices, and they have downside risk responsibility for excess spending beyond their target prices. Without flexibilities provided, CJR hospitals in disaster areas may experience financial strain which could incentivize behaviors that could compromise the quality of care provided. Providing CJR participant hospitals with additional concessions in extreme and uncontrollable circumstances will strengthen beneficiary protections, which are integral to the model's goal of improving care quality.

For the reasons discussed previously, we believe that it would be contrary to the public interest to undergo notice-and-comment procedures before finalizing the policies described for CJR participant hospitals that have been affected by extreme and uncontrollable events during performance year 2 of the model. Performance year 2 began on January 1, 2017 and concludes on December 31, 2017. With this interim final rule with comment period, it is our intention to reduce burden on and protect CJR participant hospitals and beneficiaries impacted by extreme and uncontrollable events. This extreme and uncontrollable circumstances policy will take effective with the publication of this final rule and interim final rule with comment and will be used during the reconciliation process for performance year 2 episodes that will occur beginning in March of 2018. We believe that an interim final rule with comment period minimizes hospitals' financial burden and avoids patient harm due to extenuating circumstances, efforts which would otherwise be protracted and become effective after the conclusion of performance year 2 if done through the notice-and-comment rulemaking process. Therefore, we find good cause to waive the notice of proposed rulemaking as provided under section 1871(b)(2)(C) of the Act and section 553(b)(B) of the APA and to issue this interim final rule with an opportunity for public comment. We are providing a 60-day public comment period as specified in the **DATES** section of this document.

E. Collection of Information Requirements Related to Extreme and Uncontrollable Circumstances

As stated in section 1115A(d)(3) of the Act, Chapter 35 of title 44, United States Code, shall not apply to the testing and evaluation of models under section 1115A of the Act. As a result, the information collection requirements contained in this final rule and interim final rule with comment period need not be reviewed by the Office of Management and Budget. However, we have summarized the anticipated cost burden associated with the information collection requirements in the Regulatory Impact Analysis section of this final rule and interim final rule with comment period.

F. Impacts Related to Extreme and Uncontrollable Circumstances

In order to estimate the impacts resulting from this interim final rule with comment period, we utilized 2016 CJR episode level data to approximate the impact to projected CJR model

savings resulting from the extreme and uncontrollable circumstance policy we are implementing in this interim final rule with comment period. Specifically, we first identified the CJR participant hospitals located in Alabama, California, Florida, Georgia, South Carolina, Mississippi, Texas and Louisiana (those states for which 1135 waivers were issued) that were also located in the counties listed in section III.A. of this interim final rule with comment period and listed on www.FEMA.gov/disasters as having a major disaster declaration. To approximate the date of the emergency, we used the date of the disasters as listed on the FEMA Web site from 2017 (resetting the year to 2016 to align with the claim dates of service) and selected all CJR episodes for these providers that initiated in the month preceding (that is, 30 days prior) the date of the disaster. Date of disaster declaration dates were matched to the CJR participant hospitals based on the hospitals' state addresses.

For non-fracture episodes, we capped the actual episode payment at the target price determined for that episode if the date of admission to the anchor hospitalization is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins. For fracture episodes, we capped the actual episode payment at the target price determined for that episode if the date of admission to the anchor hospitalization that is on or within 30 days before or after the date that the emergency period (as defined in section 1135(g) of the Act) begins. Our analyses indicate that the impact of capping the actual episode payments at the episode target prices based on the 2017 extreme and uncontrollable events policy could result in a decrease to the CJR model estimated savings ranging between \$1.5 to \$5.0 million for performance year 2. We note that the projected impact was mitigated by the 5 percent stop-loss/stop-gain levels applicable to performance year 2 and add that if these disasters had occurred in a future performance year with higher stop-loss/stop-gain levels then we would expect the projected impact to increase. These savings estimates do not assume any change in spending or volume due to these extreme and uncontrollable circumstances, neither before nor after the date of the disaster as listed on the FEMA Web site.

We utilized 2016 CJR model episode data assuming that it presented the best available proxy for estimating impacts to projected CJR model savings resulting from 2017 disasters. We modeled impact to savings projections using 2016 data during the same months in which

the 2017 disasters occurred, for hospitals impacted by the disasters. We note that due to lack of available actual claims data due to timing, we could not utilize actual 2017 performance data to estimate impacts from this interim final rule with comment period.

Our estimates resulted from modeling which utilized all CJR model episode data for impacted hospitals in Alabama, Georgia, South Carolina, Louisiana, and California for the month of October, 2016 and CJR model fracture episodes only for impacted hospitals in Alabama, Georgia, South Carolina, Louisiana, and California for the month of November, 2016. We also utilized all CJR episode data for impacted hospitals in Texas and Florida during the month of September, 2016 and CJR model fracture episodes only for impacted hospitals in Texas and Florida for the month of October 2016. To model estimated impacts to savings projections resulting from this interim final rule with comment period, we recalculated NPRA based on the aforementioned policies.

While we acknowledge that our estimates related to impacts resulting from this interim final rule with comment period may under- or over-estimate actual impacts resulting from the policies, we believe our assumptions are well-aligned with our other impact projections in this final rule and appropriately reflect our estimates of the impacts resulting from these policies.

IV. Collection of Information Requirements

As stated in section 1115A(d)(3) of the Act, Chapter 35 of title 44, United States Code, shall not apply to the testing and evaluation of models under section 1115A of the Act. As a result, the information collection requirements contained in this final rule and interim final rule with comment period need not be reviewed by the Office of Management and Budget. However, we have summarized the anticipated cost burden associated with the information collection requirements in the Regulatory Impact Analysis section of this final rule and interim final rule with comment period.

V. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this final rule and interim final rule with comment period as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA)

(September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This final rule cancels the EPMS and the CR Incentive Payment Model in advance of their start date and revises the design of the CJR model; these provisions impact a subset of hospitals under the IPPS. Therefore, it would have a relatively small economic impact; as a result, this final rule does not reach the \$100 million threshold and thus is neither an “economically significant” rule under E.O. 12866, nor a “major rule” under the Congressional Review Act.

B. Statement of Need

As discussed previously, review and reevaluation of policies and programs, as well as revised rulemaking, are within an agency’s discretion, especially after a change in administration occurs. After review and reevaluation of the CJR model final rule, the EPM final rule and the public comments we received in response to the March 21, 2017 IFC, in addition to other considerations, we have determined that it is necessary to rescind the regulations at 42 CFR part 512 and to reduce the scope of the CJR model for the following reasons. We believe that reducing the number of hospitals required to participate in the CJR model will allow us to continue to evaluate the effects of such a model while limiting the geographic reach of our current mandatory models. Additionally, we believe that canceling the EPMS and CR Incentive Payment Model, as well as altering the scope of the CJR model, offers CMS maximum flexibility to design alternative episode-based models and make potential improvements to these models as suggested by stakeholders, while still allowing us to test and evaluate the

impact of the CJR model on the quality of care and expenditures.

This final rule and interim final rule with comment period is also necessary to improve the CJR model for performance years 3, 4, and 5. We are implementing a few technical refinements and clarifications for certain payment, reconciliation and quality provisions, and changing the criteria for the Affiliated Practitioner List to broaden the CJR Advanced APM track to additional eligible clinicians. We believe these refinements will address operational issues identified since the start of the CJR model.

C. Anticipated Effects

In section III. of this final rule and interim final rule with comment period, we discuss the policies we are finalizing to amend the regulations governing the CJR model. We present the following estimated overall impact of the proposed changes to the CJR model. Table 6 summarizes the estimated impact for the CJR model for the last 3 years of the model. The modeling methodology for provider performance and participation is consistent with the methodology used in modeling the CJR impacts in the EPM final rule (82 FR 596). However, we updated our analysis to include an opt-in option for hospitals in 33 of the 67 MSAs selected for participation in the CJR model (all but 4 of these MSAs are from the lower cost groups), while maintaining mandatory participation for the remaining 34 MSAs (all of which are from the higher cost groups), and allowing for the exclusion of low-volume and rural hospitals in these 34 MSAs from mandatory participation and allowing them to choose voluntary participation (opt-in).

We note that we updated the list of excluded rural hospitals between the proposed and final rules as we did not have a complete set of rural hospitals; this final rule now includes in the analysis approximately 23 additional rural hospitals that we anticipate will not opt-in to the CJR model in this final rule. We expect the number of mandatory participating hospitals from year 3 forward to decrease from approximately 700, which is approximately the number of current CJR participant hospitals, to approximately 370. We assumed that if a hospital would exceed its target pricing such that it would incur an obligation of repayment to CMS of 3 percent or more in a given year, that hospital would not elect voluntary participation in the model for the final 3 performance years.

We assumed no low-volume hospitals would participate, noting that including

them in impacts would not have any noticeable effects due to their low claims volume. For purposes of identifying CJR rural hospitals for this impact, we used the 2018 IPPS \$ 412.103 rural reclassification list and checked the addresses of record for the CJR hospitals to identify any located within the rural RUCA census tracts. The likelihood of voluntary participation linearly increases based on an upper bound of 3 percent bonus, but the modeling assumed that 25 percent of hospitals in the voluntary MSAs would not consider participation so that the likelihood of participation for each hospital was capped at 75 percent; we expected 60 to 80 hospitals to elect voluntary participation in the model. We sought comment on our assumptions about the number of hospitals that would elect voluntary participation in the CJR model.

Due to a lack of available data, we did not account for participant investment in the impact analysis model we used for the proposed rule. However, we noted that we would expect that those who choose to voluntarily participate would have made investments in the CJR model that enable them to perform well and that they would anticipate earning positive reconciliation payments. For those hospitals choosing not to voluntarily participate, we would expect that the cost of any investments

they may have made based on their participation in performance years 1 and 2 of the CJR model would be outweighed by the reconciliation payment obligations they would expect to incur if they continued to participate. The 60 to 80 participants we expect to continue participating in the model through the voluntary election process are not included in our previous estimate of 370 CJR participants in the mandatory MSAs. Thus, in total we expected approximately 430 to 450 participants in the CJR model for the final 3 performance years. The participation parameters were chosen to reflect both the anticipated risk aversion of hospitals, and an expectation that many participants do not remain in an optional model or demonstration when there is an expectation that the hospital would incur an obligation of repayment to CMS. These assumptions reflected the experience with other models and demonstrations. The value of 3 percent may be somewhat larger than the level of repayment at which hospitals would opt-in, but the value was chosen to allow for the uncertainty of expected claims. We noted that the possibility of shifting episodes from CJR model participant hospitals to low-volume or other non-participating hospitals exists and that we did not include any assumptions of this potential behavior in our financial impact modeling. We

sought comment on our model assumptions that shifting of episodes will not occur.

The calculations estimated that the CJR model would result in a net Medicare program savings of approximately \$189 million over the 3 remaining performance years (2018 through 2020). This represents a reduction in savings of approximately \$106 million from the estimated net financial impacts of the CJR model in the EPM final rule (82 FR 603).

Our previous analyses of the CJR model did not explicitly model for utilization changes, such as improvements in the efficiency of service during episodes. However, these behavioral changes would have minimal effect on the Medicare financial impacts. If the actual costs for an episode are below the discounted bundled payment amount, then CMS distributes the difference between these two amounts to the participant hospital, up to a capped amount. Similarly, if actual costs for an episode are above the discounted bundled payment amount, then the participant hospital pays CMS the difference between these amounts, up to a capped amount. Due to the uncertainty of estimating the impacts of this model, actual results could be higher or lower than this estimate.

TABLE 6—COMPARISON OF INITIAL ESTIMATE OF THE IMPACT ON THE MEDICARE PROGRAM OF THE CJR MODEL WITH REVISED ESTIMATES
[Figures are in \$ millions, negative values represent savings]

Year	2018	2019	2020	Total
Initial CJR Estimate	– 61	– 109	– 125	– 294
Revised CJR Estimate	– 35	– 72	– 82	– 189
Change	26	37	43	106

Note: The initial estimate included the changes to the CJR model finalized in the EPM final rule (82 FR 603). The 2016 and 2017 initial estimate was not impacted by the proposed changes to the CJR model in the August 17, 2017 proposed rule (82 FR 39310 through 39333). The total column reflects 2018 through 2020. Totals do not necessarily equal the sums of rounded components.

The revised impact of EPM and the CR Incentive Payment as a result of “Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model” published in the January 3, 2017 **Federal Register** (82 FR 597), estimated an annual cost of \$32 million for 2018 and annual savings of \$29 million, \$36 million, \$52 million, and \$119 million for years 2019–2022, respectively. Additionally, assuming a zero percent growth in cardiac rehabilitation resulting from the CR

Incentive Payment Model (see 82 FR 604 for a discussion of the original cardiac rehabilitation impact where we estimated an impact range between a cost of \$29 million to a savings of \$32 million over 2017 to 2024; we note we assumed a zero percent growth rate for purposes of the accounting statement in the January 3, 2017 final rule and continue to do so here), we projected annual costs to the Medicare program of \$4.8 million, \$6.7 million, \$7.2 million, \$7.6 million, \$8.1 million for the years 2018 through 2022, respectively, and projected neither costs nor savings for the years 2023 and 2024. Table 7

summarizes the anticipate changes to the savings and cost estimates resulting from the cancellation of the EPMs and CR Incentive Payment model relative to the previously projected savings estimates. Overall, the change to projected savings and costs resulting from the cancellation of these models totals \$170 million, reflecting a reduction in savings for years 2018 through 2022 resulting from cancellation of the EPMs and a reduction in costs for years 2018 through 2022 resulting from the cancellation of the CR Incentive Payment Model.

TABLE 7—COMPARISON OF INITIAL ESTIMATE OF THE IMPACT ON THE MEDICARE PROGRAM OF THE EPMS AND CR INCENTIVE PAYMENT MODEL WITH REVISED ESTIMATES

[Figures are in \$ millions, negative values represent savings]

Year	2018	2019	2020	2021	2022	Total
Previous EPM Estimate	\$32	(\$29)	(\$36)	(\$52)	(\$119)	(\$204)
Previous CR Incentive Payment Model Estimate	5	7	7	8	8	34
Total Initial Estimate	37	(22)	(29)	(45)	(111)	(170)
Revised Total Estimate	0	0	0	0	0	0
Change	(37)	22	29	45	111	170

Note: Totals do not necessarily equal the sums of rounded components.

Our analysis presented the cost and transfer payment effects of the proposed rule to the best of our ability.

Comment: Several commenters questioned the validity of our proposed estimated reduction in savings of \$90 million throughout the remainder of the model due to the proposed changes to the CJR model. The commenter stated that the projected \$90 million in reduced savings is only part of the total savings that would result from continuing the CJR model in its original, entirely mandatory, form. This commenter stated that savings will increase due to the CJR model's increased regional pricing component beginning in performance year 4.

Response: We thank the commenters for their input. We acknowledge that our total savings estimates (which we note shifted from \$90 million in the proposed rule to \$108 million in this final rule and interim final rule with comment period, with \$106 million due to final changes to the CJR model as (well as the exclusion of an additional 23 rural hospitals we did not account for in the proposed rule) and an additional \$2 million resulting from the impacts of this interim final rule with comment) may prove imperfect. As with all rule and regulation development, CMS utilized standard savings modeling methodology to determine estimates of the effects from this rule. Our current modeling reflects our proposal to alter the existing CJR model for the final three performance years of 2018 through 2020.

Comment: A commenter asserted that the proposed voluntary model structure would allow for "cherry picking" of CJR patients by participating hospitals and create selection bias that may alter or interfere with evaluation efforts.

Response: We appreciate the commenter's concern about the proposed voluntary format. We note that the final policy will allow for a one-time opt in for certain hospitals and that these hospitals will be participants in the CJR model should they elect to proceed. Hospitals that elect to

voluntarily participate in CJR will be held to the same standards, regulations and programmatic expectations as the hospitals within the mandatory MSAs. Thus, we would not anticipate hospitals electing voluntary participation in CJR to be any more or less likely than hospitals within the mandatory MSAs to engage in concerning behaviors such as care stinting or biased patient selection for surgery. We appreciate the commenter's concern that the proposed model design could impede evaluation efforts and refer readers to discussion of the impact on the evaluation in section II.A of this final rule and interim final rule with comment period.

D. Effects on Beneficiaries

We believe that the cancellation of the EPMS and CR Incentive Payment Model will not affect beneficiaries' freedom of choice to obtain healthcare services from any individual or organization qualified to participate in the Medicare program, including hospitals that are making care improvements within their communities. Although these models seek to incentivize care redesign and collaboration throughout the inpatient and post-acute care spectrum, the models have not yet begun. As the current baseline assumes these models will become effective on January 1, 2018, and that these models will incentivize care improvements that will likely result in an increase in quality of care for beneficiaries, we note that it is possible that the cancellation of these models may cause hospitals that potentially made improvements in care in anticipation of the start of these models to delay or cease these investments, which may result in a reversal of any recent quality improvements. However, we believe the concerns raised by stakeholders and the lack of time to consider design improvements for these models prior to the January 1, 2018 start date outweigh potential reversal of any recent improvements in care potentially made by some hospitals and warrant cancellation of these models at this time

while we engage with stakeholders to identify future tests for bundled payments and incentivizing high value care.

We believe that the changes to the CJR model discussed in this final rule and interim final rule with comment period, specifically focusing the model on higher cost MSAs in which participation will continue to be mandatory and allowing low-volume and rural hospitals and all participant hospitals in lower cost MSAs to choose voluntary participation, will maintain the potential benefits of the CJR model for beneficiaries in many areas while providing a substantial number of hospitals with increased flexibility to better focus on priority needs of the beneficiaries they serve. Specifically, low-volume and rural hospitals as well as other hospitals in the 33 voluntary participation MSAs (which are relatively more efficient areas) may elect to participate in the CJR model if they believe that doing so best meets their organization's strategic priorities for serving the beneficiaries in their community. Alternatively, if these hospitals do not believe continued participation in the CJR model will benefit their organizational goals and local patient care priorities, they may elect not to opt-in for the remainder of the model. We believe that beneficiaries in the service areas of the hospitals that will be allowed to choose to participate in the CJR model may have an ongoing benefit from the care redesign investments these hospitals have already made during the first 2 years of the CJR model. Overall, we believe the refinements to the CJR model implemented by this final rule and interim final rule with comment period do not materially alter the potential effects of the model on beneficiaries. However, we acknowledge the possibility that the improved quality of care that was likely to have occurred during performance years 1 and 2 of the CJR model may be curtailed for beneficiaries that receive care at

hospitals that do not elect to continue participation in the CJR model.

Comment: A commenter expressed concern for the unintended consequences on beneficiaries that result from implementation of mandatory models. The commenter stated that a mandatory approach to model implementation will force some hospitals to participate in a model for which they are ill-prepared, potentially limiting beneficiaries' access to care.

Response: We appreciate the commenter's concern about unintended consequences resulting from the CJR model and as such, note that beneficiary protection remains a very high priority as originally specified in the CJR final rule. We will continue to diligently monitor CJR model participant behavior for the potential for any adverse outcomes resulting from model participation.

E. Effects on Small Rural Hospitals

The changes to the CJR model implemented by this final rule and interim final rule with comment period do not substantially alter our previous impacts of the impact on small, geographically rural hospitals specified in either the EPM final rule (82 FR 606) or the CJR model final rule (80 FR 73538) because we continue to believe that few geographically rural hospitals will be included in the CJR model. In addition, allowing all rural hospitals (as defined in § 510.2) that are not otherwise excluded the opportunity to elect to opt-in to the CJR model instead of having a mandatory participation requirement may further reduce the likelihood that rural hospitals will be included in the model. We solicited public comment on our estimates and analysis of the impact of our proposals on small rural hospitals.

Comment: We received no comments regarding the effects of these policies on small rural hospitals.

F. Effects on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. We estimated that most hospitals and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than \$7.5 to \$38.5 million in any 1 year; NAIC Sector-62 series). States and individuals

are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at <http://www.sba.gov/content/smallbusiness-size-standards>.

For purposes of the RFA, we generally consider all hospitals and other providers and suppliers to be small entities. We believe that the provisions of this final rule and interim final rule with comment period relating to acute care hospitals will have some effects on a substantial number of other providers involved in these episodes of care including surgeons and other physicians, skilled nursing facilities, physical therapists, and other providers. Although we acknowledge that many of the affected entities are small entities, and the analysis discussed throughout this final rule and interim final rule with comment period discusses aspects of episode payment models that may or would affect them, we have no reason to assume that these effects would reach the threshold level of 3 percent of revenues used by HHS to identify what are likely to be "significant" impacts. We assume that all or almost all of these entities will continue to serve these patients, and to receive payments commensurate with their cost of care. Hospitals currently experience frequent changes to payment (for example, as both hospital affiliations and preferred provider networks change) that may impact revenue, and we have no reason to assume that this will change significantly under the changes implemented by this final rule and interim final rule with comment period.

Accordingly, we have determined that this final rule and interim final rule with comment period will not have a significant impact on a substantial number of small entities. We solicited public comments on our estimates and analysis of the impact of the proposed rule on those small entities.

Comment: We did not receive comments regarding this section.

G. Effects of Information Collection

The changes implemented by this final rule and interim final rule with comment period will have a minimal additional burden of information collection for CJR model participant hospitals. The two areas which this final rule and interim final rule with comment period may increase participant burden include providing clinician engagement lists and submitting opt-in documentation (for eligible hospitals who choose to opt-in to the CJR model).

Clinician engagement list submission for the CJR model will require that participants submit on a no more than

quarterly basis a list of physicians, non-physician practitioners, or therapists who are not a CJR model collaborator during the period of the CJR model performance year specified by CMS but who do have a contractual relationship with a CJR model participant hospital based at least in part on supporting the participant hospital's quality or cost goals under the CJR model during the period of the performance year specified by CMS.

For hospitals eligible to opt-in to the CJR model that elect to participate in the model, CMS intends to provide a template that can be completed and submitted prior to the January 31, 2018 submission deadline. As stated previously, we estimate that the number of hospitals that will elect voluntary participation in CJR is 60 to 80. As stated previously, this template would be designed to minimize burden on participants, and the template will capture the information required to effectively opt-in to the model. Using wage information from the Bureau of Labor Statistics for medical and health service managers (Code 11-9111), we assumed a rate of \$105.16 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm) and estimated that the time to complete the opt-in template would be, on average, approximately 30 minutes per hospital. Thus, total costs associated with completing opt-in templates for all 60 to 80 hospitals projected to elect voluntary participation is expected to range between \$3,150 (60 hospitals) and \$4,200 (80 hospitals).

We sought comment on our assumptions and information on any costs associated with this work.

Comment: Several commenters stated that the administrative burden resulting from the clinician engagement list requirements, sharing arrangement reporting and beneficiary notification mandates of the CJR model is overwhelming. A commenter added that any reduction in burden that can be achieved would be helpful to hospitals and would enable patient-centered care. Another commenter stated that they have significant concerns about hospitals' ability to maintain accurate clinician engagement lists with start and end dates for each clinician. The commenter noted that this would be particularly challenging for hospitals in California, where they believe alignment with providers is particularly complicated, thus making a list of this type burdensome to maintain.

Response: We appreciate the commenters' concerns over the administrative burden associated with the CJR model as well as the burden

resulting from clinician engagement lists and the concern that maintaining accurate lists will prove particularly difficult for some providers. We acknowledge that the requirement of submitting clinician engagement lists may be burdensome for providers. However, as discussed in section III.F. of the proposed rule, we developed this requirement in response to feedback from stakeholders who expressed a desire to enhance opportunities for those physicians, non-physician practitioners, and therapists without a financial arrangement under the CJR model, but who are affiliated with and support the Advanced APM Entity in its participation in the Advanced APM for purposes of the Quality Payment Program.

H. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule and interim final rule with comment period, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the final rule and interim final rule with comment period, we assume that the total number of unique commenters on the July 25, 2016 proposed rule that proposed the EPMs and CR Incentive Payment Model will be the number of reviewers of this final rule and interim final rule with comment period. We received 85 unique comment submissions for this final rule but maintain that the 175 comments received for the July 25, 2016 EPM and CR Incentive Payment Model proposed rule reflects a more conservative estimate of the number of organizations which invested resources in review of this final rule, regardless of whether or not the organization elected to formally submit comments. We acknowledge that this assumption may understate or overstate the costs of reviewing this final rule and interim final rule with comment period. It is possible that not all commenters reviewed the precedent rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we believe that the number of past commenters on the EPM proposed rule would be a fair estimate of the number of reviewers of this rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of the proposed rule. However, for the purposes of our estimate we assume that each reviewer reads approximately 100 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$105.16 per hour, including overhead and fringe benefits https://www.bls.gov/oes/current/oes_nat.htm. Assuming an average reading speed, we estimate that it would take approximately 1.6 hours for the staff to review the proposed rule. For each entity that reviews the rule, the estimated cost is \$168.26 (1.6 hours × \$105.16). Therefore, we estimate that the total cost of reviewing this regulation is \$29,445 (\$105.16 × 175 reviewers).

I. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2017, that is approximately \$148 million. This final rule and interim final rule with comment period does not include any mandate that would result in spending by state, U.S. territories, local or tribal governments, in the aggregate, or by the private sector in the amount of \$148 million in any 1 year.

J. Federalism

We do not believe that there is anything in this final rule and interim final rule with comment period that either explicitly or implicitly preempts any state law, and furthermore we do not believe that this final rule and interim final rule with comment period will have a substantial direct effect on state or local governments, preempt state law, or otherwise have a federalism implication.

K. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. This final rule and interim final rule with comment period is not expected to be subject to the requirements of E.O. 13771 because it is estimated to result in no more than *de minimis* costs.

L. Alternatives Considered

Throughout this final rule and interim final rule with comment period, we have identified our policies and alternatives that we have considered, and provided information as to the effects of these alternatives and the rationale for each of the policies. We considered but did not propose to allow

voluntary participation in all of the 67 selected MSAs in the CJR model because the overall estimated CJR model impact would no longer show savings, and would likely result in costs. An entirely voluntary CJR model would likely result in costs due to the assumption that, in aggregate, hospitals that expect to receive a positive reconciliation payment from Medicare would elect to opt-in to the model while hospitals that expect to owe Medicare a reconciliation amount would not likely elect to participate in the model. We also considered but did not propose limiting participation to the proposed 34 mandatory participation MSAs and not allowing voluntary participation in any of the 67 selected MSAs. In the August 17, 2017 proposed rule, we noted that if participation was limited to the proposed 34 mandatory participation MSAs and voluntary participation was not allowed in any MSA, the impact to the overall estimated model savings over the last 3 years of the model would be closer to \$30 million than the \$90 million estimate presented in section V. of the proposed rule (82 FR 39327 through 39331), because our modeling did not include assumptions about behavioral changes that might lower fee-for-service spending. Since our impact model estimated that 60 to 80 hospitals would choose voluntary participation and that these potential voluntary participants would be expected to earn only positive reconciliation payments under the model, these positive payments to the voluntary participants would offset some of the savings garnered from mandatory participants. However, we did propose to allow voluntary participation in the proposed 33 voluntary participation MSAs and for low-volume and rural hospitals to permit hospitals that have made investments in care redesign and commitments to improvement to continue to participate in the model for the remaining 3 years. We stated that we believed our proposal would benefit a greater number of beneficiaries because a greater number of hospitals would be included in the CJR model.

Instead of proposing to cancel the EPMs and CR Incentive Payment Model, we considered altering the design of these models to allow for voluntary participation but as this would potentially involve restructuring the model design, payment methodologies, financial arrangement provisions and/or quality measures, we did not believe that such alterations would offer providers enough time to prepare for such changes, given the planned

January 1, 2018 start date. In addition, if at a later date we decided to offer these models, or similar models we would not expect to implement them through rulemaking if done on a voluntary basis, but rather would establish them consistent with the manner in which we have implemented other voluntary models.

We solicited and welcomed comments on our proposals, on the alternatives we identified, and on other alternatives that we should consider, as well as on the costs, benefits, or other effects of these.

We did not receive any comments regarding this section.

M. Accounting Statement and Table

As required by OMB Circular A-4 under Executive Order 12866 (available at http://www.whitehouse.gov/omb/circulars_a004_a-4) in Table 8, we have

prepared an accounting statement showing the classification of transfers associated with the provisions in this final rule and interim final rule with comment period. The accounting statement is based on estimates provided in this regulatory impact analysis. As described in Table 6, we estimate the changes to the CJR model will continue to result in savings to the federal government of approximately \$189 million over the 3 remaining performance years of the model from 2018 to 2020, noting these changes do reduce the original CJR estimated savings by approximately \$106 million. As described in section F of the interim final rule with comment in this rule, we anticipate an additional cost due to currently known events between \$1.5 and \$5 million from the extreme and uncontrollable events policy we are establishing in this interim final rule

with comment. We project \$2.0 million as a point-estimate for one-time cost associated with the extreme and uncontrollable events policy during performance year 2. The impact over subsequent years will depend on the number of events in CJR regions and the stop-gain and stop-loss limits for that year. In Table 8, the overall annualized change in payments (for all provisions in this final rule and interim final rule with comment period relative to the CJR, EPM and CR models as originally finalized) based on a 7-percent and 3-percent discount rate, results in net federal monetary transfer from the federal government to participant IPPS hospitals of \$199.3 million and \$239.1 million in 2017 dollars, respectively, over the period of 2018 to 2022. Both of these estimates of the net transfer would increase by \$2 million for the one-time cost of the 2017 disaster declarations.

TABLE 8—ACCOUNTING STATEMENT CHANGES TO COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL AND CANCELLATION OF EPISODE PAYMENT MODELS AND CR INCENTIVE PAYMENT MODEL FOR PERFORMANCE YEARS 2018 TO 2022 AND CJR EXTREME AND UNCONTROLLABLE CIRCUMSTANCES POLICY 2017

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Costs: *				
Upfront cost of regulation (\$million)	0.03	2017	7	–2018 upfront cost.
	0.03	2017	3	–2018 upfront cost.
From Whom to Whom	Incurred by IPPS Hospitals as a result of this final rule.			
Impact of Disaster Declaration in 2017:				
One-time cost of Disaster Declaration	2	2017	7	–2017 one-time cost.
	2	2017	3	–2017 one-time cost.
From Whom to Whom	From the Federal Government to 2017 disaster declaration hospitals.			
Transfers:				
Annualized/Monetized (\$million/year)	48.6	2017	7	2018–2022.
	52.2	2017	3	2018–2022.
From Whom To Whom	From the Federal Government to Participating IPPS Hospitals.			

* The cost includes the regulatory familiarization and completing opt-in templates for up to 80 hospitals to join the CJR model.

N. Conclusion

This analysis, together with the remainder of this preamble, provides the Regulatory Impact Analysis of a rule. As a result of this final rule and interim final rule with comment period, we estimate that the financial impact of the changes to the CJR model will result in a reduction to previously estimated savings by \$106 million over the 3 remaining performance years (2018 through 2020) and a financial impact of \$2 million reduction in savings estimates for the one-time cost resulting from the impacts of disaster declaration in 2017 although we note that the CJR

model will still be estimated to save the Medicare program approximately \$189 million over the remaining 3 performance years. We note that the projected \$170 million savings we had estimated that the EPMs and CR Incentive Payment Model would generate for the Medicare program will not be realized as this final rule and interim final rule with comment is cancelling those models.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 510

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 512

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at section 1115A of the Social Security Act, the Centers for Medicare & Medicaid

Services amends 42 CFR chapter IV, as set forth below.

PART 510—COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL

■ 1. The authority citation for part 510 continues to read as follows:

Authority: Secs. 1102, 1115A, and 1871 of the Social Security Act (42 U.S.C. 1302, 1315(a), and 1395hh).

■ 2. Section 510.2 is amended by—

■ a. Revising the definition of “Actual episode payment”;

■ b. Adding, in alphabetical order, definitions of “Low-volume hospital” and “Mandatory MSA”.

■ c. Revising the definition of “Participant hospital”; and

■ d. Adding the definition of “Voluntary MSA”.

The revisions and additions read as follows:

§ 510.2 Definitions.

* * * * *

Actual episode payment means the sum of standardized Medicare claims payments for the items and services that are included in the episode in accordance with § 510.200(b), excluding the items and services described in § 510.200(d).

* * * * *

Low-volume hospital means a hospital identified by CMS as having fewer than 20 LEJR episodes in total across the 3 historical years of data used to calculate the performance year 1 CJR episode target prices.

* * * * *

Mandatory MSA means an MSA designated by CMS as a mandatory participation MSA in accordance with § 510.105(a).

* * * * *

Participant hospital means one of the following:

(1) During performance years 1 and 2 of the CJR model and the period from January 1, 2018 to January 31, 2018 of performance year 3, a hospital (other than a hospital excepted under § 510.100(b)) with a CCN primary address located in one of the geographic areas selected for participation in the CJR model in accordance with § 510.105.

(2) Beginning February 1, 2018, a hospital (other than a hospital excepted under § 510.100(b)) that is one of the following:

(i) A hospital with a CCN primary address located in a mandatory MSA as of February 1, 2018 that is not a rural hospital or a low-volume hospital on that date.

(ii) A hospital that is a rural hospital or low-volume hospital with a CCN

primary address located in a mandatory MSA that makes an election to participate in the CJR model in accordance with § 510.115.

(iii) A hospital with a CCN primary address located in a voluntary MSA that makes an election to participate in the CJR model in accordance with § 510.115.

* * * * *

Voluntary MSA means an MSA designated by CMS as a voluntary participation MSA in accordance with § 510.105(a).

■ 3. Section 510.105 is amended by revising paragraph (a) to read as follows:

§ 510.105 Geographic areas.

(a) *General.* The geographic areas for inclusion in the CJR model are obtained based on a stratified random sampling of certain MSAs in the United States.

(1) All counties within each of the selected MSAs are selected for inclusion in the CJR model.

(2) Beginning with performance year 3, the selected MSAs are designated as either mandatory participation MSAs or voluntary participation MSAs.

* * * * *

■ 4. Section 510.115 is added to read as follows:

§ 510.115 Voluntary participation election.

(a) *General.* To continue participation in performance year 3 and participate in performance year 4 and performance year 5, the following hospitals must submit a written participation election letter as described in paragraph (c) of this section during the voluntary participation election period specified in paragraph (b) of this section:

(1) Hospitals (other than those excluded under § 510.100(b)) with a CCN primary address in a voluntary MSA.

(2) Low-volume hospitals with a CCN primary address in a mandatory MSA.

(3) Rural hospitals with a CCN primary address in a mandatory MSA.

(b) *Voluntary participation election period.* The voluntary participation election period begins on January 1, 2018 and ends on January 31, 2018.

(c) *Voluntary participation election letter.* The voluntary participation election letter serves as the model participation agreement. CMS accepts the voluntary participation election letter if the letter meets all of the following criteria:

(1) Includes the following:

(i) Hospital name.

(ii) Hospital address.

(iii) Hospital CCN.

(iv) Hospital contact name, telephone number, and email address.

(v) Model name (that is, CJR model).

(2) Includes a certification that the hospital will—

(i) Comply with all applicable requirements of this part and all other laws and regulations applicable to its participation in the CJR model; and

(ii) Submit data or information to CMS that is accurate, complete and truthful, including, but not limited to, the participation election letter and any quality data or other information that CMS uses in its reconciliation processes.

(3) Is signed by the hospital administrator, CFO or CEO.

(4) Is submitted in the form and manner specified by CMS.

■ 5. Section 510.120 is amended by removing paragraph (b)(4), revising paragraph (c), and adding paragraphs (d) and (e) to read as follows:

§ 510.120 CJR participant hospital CEHRT track requirements.

* * * * *

(c) *Clinician engagement list.* Each participant hospital that chooses CEHRT use as provided in paragraph (a)(1) of this section must submit to CMS a clinician engagement list in a form and manner specified by CMS on a no more than quarterly basis. This list must include the following information on individuals for the period of the performance year specified by CMS:

(1) For each physician, nonphysician practitioner, or therapist who is not a CJR collaborator during the period of the CJR model performance year specified by CMS but who does have a contractual relationship with the participant hospital based at least in part on supporting the participant hospital's quality or cost goals under the CJR model during the period of the performance year specified by CMS:

(i) The name, TIN, and NPI of the individual.

(ii) The start date and, if applicable, the end date for the contractual relationship between the individual and participant hospital.

(2) [Reserved]

(d) *Attestation to no individuals.* If there are no individuals that meet the requirements to be reported, as specified in paragraphs (b)(1) through (3) or paragraph (c) of this section, the participant hospital must attest in a form and manner required by CMS that there are no individuals to report.

(e) *Documentation requirements.* (1) Each participant hospital that chooses CEHRT use as provided in paragraph (a)(1) of this section must maintain documentation of their attestation to CEHRT use, clinician financial

arrangements lists, and clinician engagement lists.

(2) The participant hospital must retain and provide access to the required documentation in accordance with § 510.110.

■ 6. Section 510.210 is amended by revising paragraph (b) to read as follows:

§ 510.210 Determination of the episode.

* * * * *

(b) *Cancellation of an episode.* The episode is canceled and is not included in the determination of NPRA as specified in § 510.305 if any of the following occur:

(1) The beneficiary does any of the following during the episode:

(i) Ceases to meet any criterion listed in § 510.205.

(ii) Is readmitted to any participant hospital for another anchor hospitalization.

(iii) Initiates an LEJR episode under BPCI.

(iv) Dies.

(2) For performance year 3, the participant hospital did not submit a participation election letter that was accepted by CMS to continue participation in the model.

■ 7. Section 510.300 is amended by revising paragraphs (b)(6) to read as follows:

§ 510.300 Determination of quality-adjusted episode target prices.

* * * * *

(b) * * *

(6) *Exclusion of incentive programs and add-on payments under existing Medicare payment systems.* Certain incentive programs and add-on payments are excluded from historical episode payments by using, with certain modifications, the CMS Price (Payment) Standardization Detailed Methodology used for the Medicare spending per beneficiary measure in the Hospital Value-Based Purchasing Program.

* * * * *

■ 8. Section 510.305 is amended by revising paragraphs (d)(1) and (e)(1)(i) and adding paragraph (k) to read as follows:

§ 510.305 Determination of the NPRA and reconciliation process.

* * * * *

(d) * * *

(1) Beginning 2 months after the end of each performance year, CMS does all of the following:

(i) Performs a reconciliation calculation to establish an NPRA for each participant hospital.

(ii) For participant hospitals that experience a reorganization event in which one or more hospitals reorganize under the CCN of a participant hospital performs—

(A) Separate reconciliation calculations (during both initial and subsequent reconciliations for a performance year) for each predecessor participant hospital for episodes where anchor hospitalization admission occurred before the effective date of the reorganization event; and

(B) Reconciliation calculations (during both initial and subsequent reconciliations for a performance year) for each new or surviving participant hospital for episodes where the anchor hospitalization admission occurred on or after the effective date of the reorganization event.

* * * * *

(e) * * *

(1) * * *

(i) Determines actual episode payments for each episode included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) using claims data that is available 2 months after the end of the performance year. Actual episode payments are capped at the amount determined in accordance with § 510.300(b)(5) for the performance year or the amount determined in paragraph (k) of this section for episodes affected by extreme and uncontrollable circumstances.

* * * * *

(k) *Extreme and uncontrollable circumstances adjustment.* (1) The episode spending adjustments specified in paragraph (k)(2) of this section apply for a participant hospital that has a CCN primary address that meets both of the following:

(i) Is located in an emergency area during an emergency period, as those terms are defined in section 1135(g) of the Act, for which the Secretary has issued a waiver under section 1135; and

(ii) Is located in a county, parish, or tribal government designated in a major disaster declaration under the Stafford Act.

(2)(i) For a non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins, actual episode payments are capped at the target price determined for that episode under § 510.300.

(ii) For a fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before or after the date that the emergency period (as defined in section 1135(g) of the Act) begins, actual episode payments are capped at the target price determined for that episode under § 510.300.

■ 9. Section 510.410 is amended by adding paragraph (b)(1)(i)(G) to read as follows:

§ 510.410 Compliance enforcement.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(G) Failing to participate in CJR model-related evaluation activities conducted by CMS or its contractors or both.

* * * * *

■ 10. Section 510.605 is amended by revising paragraph (c)(2) to read as follows:

§ 510.605 Waiver of certain telehealth requirements.

* * * * *

(c) * * *

(2) CMS waives the payment requirements under section 1834(m)(2)(B) of the Act to allow the distant site payment for telehealth home visit HCPCS codes unique to this model.

* * * * *

PART 512—[Removed and Reserved]

■ 11. Part 512 is removed and reserved.

Dated: November 22, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 28, 2017.

Eric D. Hargan,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 2017–25979 Filed 11–30–17; 8:45 am]

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A new table will be published in the first issue of each month.

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